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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 191.

FRANK F. CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS, APPELLANT,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY, A. BONNEVAL, JOS. HERNANDEZ, AND GEORGE BINDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 27, 1877.

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1 *Bill of complaint.—Filed August 2nd, 1873.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth circuit and district of Louisiana. In equity.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK of N. O.,
vs.
NEW ORLEANS & CARROLLTON RAILROAD CO. & others.
No. 7036.

To the honorable the judges of the circuit court of the United for the fifth circuit and district of Louisiana:

Charles Case, receiver of the First National Bank of New Orleans, duly appointed, commissioned and qualified under the provisions of section fifty of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, which bank was an association duly incorporated under the pro-
2 visions of said act, and located in the city of New Orleans, brings this his bill against the New Orleans and Carrollton Railroad Company, duly incorporated by the laws of, and domiciled in the State of Louisiana; and against Gustave T. Beauregard and Thomas P. May, both residing in and citizens of the State of Louisiana; and Augustus C. Graham, residing in and a citizen the State of New York, and against Joseph Hernandez, G. W. Binder and Alexander Bonneval, who reside in and are citizens of the State of Louisiana; and also against the Fourth National Bank of New York, an association duly incorporated under said act of Congress, and located in the city and State of New York.

And thereupon your orator complains and says:

That on or about the 12th day of April, 1866, the said G. T. Beauregard leased from the New Orleans and Carrollton Railroad Company the railroad belonging to the said company, together with the real estate thereunto belonging, the rolling-stock thereof, the movable property, and all the rights, franchises and privileges of said company, for and
3 during the term of twenty-five years, in the manner and form more fully set forth in the Exhibit A, which is a copy of the said lease, hereunto annexed, and made a part of this bill;

That although the said lease was made in the name of the said Beauregard, it was so made with a view of a future partnership for carrying on the said business;

That on or about the 18th day of April, 1866, the said Beauregard entered into a contract with the said T. P. May and the said A. C. Graham, which is more fully set forth in the copy of said contract hereunto annexed as part of this bill, and marked Exhibit B.

Your orator alleges that under the said contract of co partnership the said parties conducted and carried on the business for which it was intended. That the said railroad was remodelled, refitted and changed from steam-cars to horse cars, requiring heavy outlays of money, and that many other expenses were incurred by the partnership in their said business;

That in addition to the foregoing, the partnership, in order the

4 more successfully to carry on the said business, made large purchases of real estate, to wit:

1st. That purchased from William C. Raymond, by act before Amédée Ducatel, notary public in the parish of Orleans, on the 5th day of May, 1866; consisting of a square of ground bounded by Napoleon avenue, Berlin, Nayades and Appollo streets, in the then city of Jefferson, now a part of the city of New Orleans, with all the improvements thereon, as is more fully described by the copy of said act hereunto annexed as part of this bill and marked C.

2nd. That purchased from Samuel A. Kohn, by act before the same notary, dated April 30th, 1866, consisting of a square of ground in the then city of Jefferson, now New Orleans, bounded by Nayades, Apollo, Milan and Berlin streets, as is more fully set forth in the copy of said act hereto annexed as part of this bill, and marked Exhibit D.

3d. That purchased from the said New Orleans and Carrollton Railroad Company, by act before Selim Magner, notary public for the
5 parish of Orleans, on the 29th day of June, 1866, consisting of a triangle of ground in the town of Carrollton, in the parish of Jefferson, bounded by Levee st., Carrollton avenue, and First street, as is more fully described in the copy of said act hereunto annexed as part of this bill, and marked Exhibit E.

This last mentioned property was purchased in the name of said Beauregard alone, but was in fact bought for the partnership, was paid for out of the partnership funds, and belonged to the said partnership.

4th. That purchased from the said New Orleans and Carrollton Railroad Company, known as the horse station, situated in the first district of New Orleans, in square bounded by St. Charles, Felicity, Apollo, now called Carondelet, and Polymnia streets, consisting of seven lots, as is more fully and particularly described in the copy of the act of conveyance passed before Selim Magner, notary public, in New Orleans on the 15th day of January, 1867, which is annexed as part of this
6 bill and marked Exhibit F. This, like the preceeding property, was purchased in the name of Beauregard, but with partnership funds, and belongs to the partnership.

5th. In addition to the above property purchased by the partnership the said firm, by their lease from the said New Orleans and Carrollton Railroad Company, were entitled for the full term of their lease to the use of the square of ground situated on the corner of Napoleon avenue and St. Charles street, in the parish of Jefferson as then called but now Orleans, on which they made and erected extensive and valuable improvements which belonged to said firm.

Your orator alleges that all or nearly all the money paid by the said Beauregard, May, and Graham for the purchase of said lease and property, and expended in making improvements, and in making alterations of the railroad, and for the equipment and furnishing stock, and for other materials in conducting said business, was obtained from the said First National Bank, and that the partnership is justly
7 indebted to said bank therefor.

That said partnership opened an account with said bank in the name "G. T. Beauregard, lessee"; that though the account stood in this manner on the books of the bank, it was in reality the account of the said partnership; that the balance which by said account appears to be still due is only seventy-two thousand and eight $\frac{89}{100}$ dollars ($72,008.89), but that the real amount of the indebtedness of the said firm to the bank is two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars ($237,008$\frac{89}{100}$), with interest thereon from the 13th day of May, 1867.

That on the 12th of April, 1866, the said Graham was president of said First National Bank, and continued thereafter so to act until the 12th of July, 1866, at which time he left New Orleans, and T. P. May was chosen as temporary president. On the 6th of October, 1866, said May was elected president and continued so to act until April 8th, 1867, wenh David B. Forbes was elected and acted until the bank was closed by proceedings in behalf of the United States Government.

8 That while the said T. P. May was acting as president of the bank, the aforesaid account of the partnership of Beauregard, May, and Graham being largely overdrawn, in order to settle the overdraft nominally on the books and to avoid the scrutiny of the officers of the United States Government, he drew, on or about the 14th of September, 1866, a promissory note in the name of the said Beauregard, lessee, payable to the said bank on demand, for the sum of forty thousand dollars.

That he caused the amount of said note to be credited in the said account; that no attempts were ever made to collect the said note by said May or his successors in office. A copy of said note is hereunto annexed as part of this bill and marked Exhibit G.

Your orator alleges that the said account on or about the 19th of March, 1867, being again largely overdrawn, the said T. P. May at that date drew an instrument purpo'ting to be a bill of exchange to his own order upon the said A. C. Graham in New York, for the sum of one

9 hundred and twenty-five thousand dollars, and endorsed the same and credited the amount thereof in the account of the said partnership on the books of said bank; the said bill of exchange was never stamped, was never forwarded for presentation, for acceptance, or collection, but remained in the banking building in a separate room used by the president and in a drawer used by the president alone. A copy of said bill is hereunto annexed as part of this bill and marked Exhibit O.

Your orator alleges that both the note before mentioned and this bill were simulations, were never intended to be real transactions, and were made merely for giving a fictitious balance of the account with the view of imposing upon and deceiving the examiners appointed by the Comptroller of the Currency to inspect the business of the bank and its management.

Your orator alleges that both of the preceding credits were placed by said May in the account in violation of his duty as an officer of the bank, and in fraud of the rights of the bank; and that the money

10 drawn from the bank was used for the benefit of the said partnership, and is still due in the same manner as if said fictitious credits had never been placed on the books of the bank. Such being the state of the indebtedness of the said partnership to the bank, your orator, in his capacity as receiver aforesaid, brought suit against the said partners of the said firm on the law side of this hon. court for the recovery of the said sum due to the bank, to wit, the sum of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars, with interest as aforesaid. Your orator alleges that the said A. C. Graham, being absent from and a non resident of the State of Louisiana, he could not be served with process in said suit, and not having himself voluntarily appeared in the suit, and the firm having been previously dissolved, there could be no judgment obtained against him personally; but that heretofore, to wit, on or about the 26th day of February, 1873, by the consideration and judgment of said court, your orator recovered severally

11 against said defendant Beauregard, and against said defendant

May, each the sum of seventy-nine thousand and two dollars and sixty cents, their several virile shares as ordinary partners, of said debt, together with interest thereon at the rate of five per cent. per annum from the 13th day of May, 1867, and costs of said suit, which were adjudged to your orator in and by the said court, whereof the said May and the said Beauregard were convicted, as by the record of the said judgment, and the proceedings in said suit (being numbered 6488 upon the docket of this court), reference being thereto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further shows unto your honors that the said judgment, so recovered in the manner aforesaid, remaining in full force and effect, unpaid and unsatisfied, your orator, on or about the 10th day of May, 1873, for the purpose of obtaining satisfaction of said judg-
12 ments, sued and prosecuted out of the said court a s'perate writ of fieri facias upon each of said judgments, directed to the United States marshal in and for the district of Louisiana, which writs were duly delivered to said marshal to be executed in due form of law.

And your orator further shows that said marshal has returned on each of said writs of fieri facias that, upon demand made of said defendants, as well as of your orator, to point out property on which to levy, said parties failed to point out any property, and he made further return that he could find no property belonging to said defendants—all of which will more fully appear by the said writs of fieri facias and the returns thereon, on file in said court, reference thereto being had.

Your orator alleges that the said proceedings and judgments establish judicially that the full sum of two hundred and thirty-seven thousand and eight $\frac{82}{100}$ dollars, with interest as aforesaid, is due to the bank by said partnership, and that each partner thereof is in-
13 debted for his virile share; that your orator failed to obtain a similar judgment against the said A. C. Graham solely because process could not be served on him, as before stated. The said Graham is indebted to the bank for the same sum, and in like manner as the said Beauregard and the said May. That the said Graham was, on the 8th day of May, 1867, ever since hath been, and still is, utterly insolvent, and possessed of no property out of which the said debt could or can be made.

Your orator further avers that for the payment of the above indebtedness the said First National Bank had and has a privilege and lien upon all the property which belonged to the said partnership, and has a right to be paid out of the same in preference to creditors of the individual partners. That said property could not be legally conveyed in payment of the individual debts of any one of the partners, or appropriated to the use of any one of the partners, so as to defeat the rights of the bank against said partnership property, the said partnership be-
14 ing insolvent, and having no other property out of which the said debt could be paid.

Your orator avers that John Jay Knox, an officer of the Government of the United States, and special agent of the Treasury Department, authorized and duly commissioned therefor, took possession of the said First National Bank, its books, and all its assets, and closed the same as an acting bank on or about the 13th of May, 1867; that he thus became aware, and the government through him, its agent, of the said indebtedness of the said partnership of Beuregard, May, and Graham to the said bank, and was also aware of the origin of said debt, and of the fact that the business of the said partnership was mainly carried

on through the money of the bank, and that the money of the bank invested in purchases of property by the partnership had not been repaid.

Notwithstanding this knowledge the said government, through John Jay Knox, its agent, induced the said T. P. May to transfer his interest in the said partnership and its property to the said government,
15 as appears by act of 14th May, 1867, before A. Hero, notary public, a copy of which is hereto annexed as a part hereof, and marked Exhibit N; and further, on the 16th day of May, 1867, to more formally transfer and convey to the said government the interests owned by said T. P. May and A. C. Graham in the said partnership, and all its property, in payment of an alleged indebtedness due by said May individually and personally to the said government, as more fully appears from the copy of said act passed before said A. Hero on the 16th of May, 1867, which is hereto annexed as part of this bill, and marked Exhibit H.

Your orator is informed, and so charges, that this pretended conveyance by the said May of the interest of Graham to the government in payment of his individual indebtedness was made without any legal authority from Graham therefor, or, even if authorized, is null and void.

Your orator respectfully shows that by said transfers and assignments by the said T. P. May, the United States acquired no ownership
16 of the lease of said railroad, nor did they acquire any aliquot part of it, or of any of the property or effects of the firm. The utmost extent of their acquisition was an interest in the surplus, if any, which might remain after all debts of the firm including that due to said bank should be paid.

And your orator further avers that the conveyance made by said May to pay his individual debts, in both the preceeding acts was and is, in so far as it was intended to transfer any other interests, illegal and void, and was a fraud upon the rights of the First National Bank as a creditor of the said partnership.

Your orator further alleges that the United States having by the illegal means above set forth gotten possession of the interests of the said May and Graham in the said partnership, and the property thereof, did, by act passed befor' Gustave Le Gardeur, jr., notary public in New Orleans, on the 21st of August, 1867 (the said Beauregard
17 intervening and becoming a party thereto), transfer and convey the interests of said May and Graham, acquired as aforesaid, to the said Alexander Bonneval, G. W. Binder, and Joseph Hernandez, a copy of which act is hereunto annexed as part of this bill, and marked Exhibit I.

That subsequently, on or about the 31st of October, 1867, the said United States entered into an agreement with the said Bonneval, Binder, and Hernandez, by which the preceeding act was annulled, and a new conveyance made by the said government of the said property to the said parties, as more fully appears from the copies of the two contracts hereto annexed as part of this bill and marked Exhibits J & K.

Your orator further alleges that the said Bonneval, Binder, and Hernandez, and the said Beauregard entered into an agreement on or about the 15th of October, 1867, with the said New Orleans and Carrollton Railroad Company, by which the said lease and all the property belonging to the said partnership, Beauregard, May and Graham,
18 was surrendered to the said railroad company. This was done in consideration of the said railroad company assuming all the debts and liabilities of the said partnership of Beauregard, May and

Graham, and also giving four thousand shares of one hundred dollars each of the capital stock of the said railroad company to said Beauregard, Bonneval, Binder and Hernandez, one-third thereof to said Beauregard, and the remaining two-thirds to the said Bonneval, Binder and Hernandez. All of which more fully appears from the copy of an act passed before Selim Magner, a notary public, on the 15th day of October, 1867, which is hereto annexed as part of this bill and marked Exhibit L.

Your orator further charges that the previously mentioned transfer by the United States to Bonneval, Binder and Hernandez was made by William Bell, who pretended to represent the United States; your orator avers that said Bell had no authority sufficient in law to make
19 said sale and conveyance, and further that the said sale was made without pursuing the formalities of law required to render valid the sale of property belonging to the United States, and further that the pretended affirmance of said sale by Edward Jordan, solicitor of the United States Treasury, was without authority of law, and that in consequence the said pretended sale was null and void. All of which foregoing facts were well known to the said Bonneval, Binder and Hernandez, and the said Beauregard and the said New Orleans and Carrollton Railroad Company and the said government, at the time the said acts of transfer and conveyance and affirmance were made and accepted.

Your orator further shows that on or about the 8th day of May, 1867, the said A. C. Graham transferred and conveyed his interest in the said partnership of Beauregard, May, and Graham to the said Fourth National Bank of New York, as more fully appears from the copy of said act hereto annexed as part of this bill and marked Exhibit M.

20 That although the said instrument appears on its face to be an absolute conveyance of his interest, yet in truth it was made only for the purpose of indemnifying the said Fourth National Bank against certain liabilities, which the bank had contracted, on account of the said First National Bank of New Orleans. Your orator cannot at present state the exact amount of the indebtedness of the said First National Bank growing out of the payment of the said liabilities by the said Fourth National Bank, because the amount depends upon what has been or may be realized from other securities placed in the hands of said Fourth National Bank by said Graham, for which he had also given his personal guarantee. The debt claimed to be originally due the said Fourth National Bank was about twenty-six thousand dollars, which has been considerably reduced by payments since made.

Now your orator charges that the said First National Bank be-
21 ing at the time insolvent and said firm of Beauregard, May and Graham being also insolvent, the said Graham could not legally make the said transfer to the said Fourth National Bank. That the said Fourth National Bank of New York brought suit in this hon. court against the said New Orleans and Carrollton Railroad Company, for the purpose of recovering the interest transferred by Graham, as aforesaid, to the bank. In the said suit there was judgment rendered against the bank, which was affirmed by the Supreme Court of the United States.

All these facts will more fully appear from reference to said suit now of record in this hon. court.

The said Fourth National Bank acquiesced in said judgment, made due proof of their claim against the First National Bank and have received dividends thereon as an ordinary creditor of the said First National Bank. These acts were inconsistent with any claim on the part

of said Fourth National Bank founded upon said transfer of the said Graham, and was a relinquishment and abandonment of all claim
22 under said transfer; your orator is informed and believes that it is so regarded by the said Fourth National Bank.

That under the foregoing circumstances, the said transfer from Graham to the said Fourth National Bank is inoperative and null and void, so far as this suit is concerned and the rights of your orator as receiver of the First National Bank.

Your orator alleges that at and before the time of said pretended transfers and conveyances by the said Thomas P. May to the United States of his and Graham's interest in the New Orleans and Carrolton Railroad Company, and of their interests in the property of the said partnership, and also at the time of the transfer of said Beauregard of his interest in the said property to the New Orleans and Carrollton Railroad Company, the said Beauregard, May, and Graham were each in a state of insolvency and have ever since been insolvent, and have no means or property out of which the before mentioned indebted-
23 ness of their firm can be paid, other than the property they thus illegally endeavored to convey.

Now, your *your* orator alleges and charges that the times at which all the before mentioned acts were passed and conveyances and transfers made the said Bonneval, Binder, and Hernandez, and the said Beauregard, and the said New Orleans and Carrollton Railroad Company, and the said A. C. Graham, and the said T. P. May, and the United States were well aware of the said indebtedness of the partnership of th said Beauregard, May and Graham to the said First National Bank, and that the money of the bank had, without any reimbursement, been used in the purchase and improvement of the property so transferred and conveyed, and also of the insolvency of the said Beauregard, May, and Graham, and that the said transfers and conveyance were made for the payment of the individual debts and for the individual interests of the
24 partners; and that said transfers conveyed the entire interests and property of the said partnership without any provision whatever for the payment of the debts of the said firm, and that said conveyances were a fraud upon the rights of the creditors of the firm and upon the rights of said First National Bank. Under the circumstances your orator alleges that said conveyances and transfers were illegal and fraudulent so far as they affect the rights of said First National Bank; and that all the property and interests of the said partnership, so transferred and conveyed, should be decreed by this hon. court to be liable for the debt due to said bank.

Now, your orator alleges that the said New Orleans and Carrolton Railroad Company, by its acts and doings in the premises, as above set forth, and by accepting said fraudulent conveyances and endeavering to put the property of said firm of Beauregard, May, and Graham beyond the reach of the creditors of said firm, and to hinder, delay and defeat said creditors, and especially your orator, has become
25 bound in law and in good conscience to pay the amount due by said partnership of Beauregard, May, and Graham to the said First National Bank.

And your orator further alleges that such being the obligation of the said railroad company, it did expressly assume in the said act of Oct. 13th, 1867, between said company and Beauregard, Bonneval, Binder, and Hernandez to pay all the indebtedness of the said parties, on account of said railroad and the business thereof, growing out of the original lease and contracts subsequent thereto. That this assumption cov-

ered the debt due to the said First National Bank, and your orator has the right to avail himself of it, and to a decree of this hon. court herein, enforcing said liability. And your orator avers that said bank is now the sole creditor of said partnership.

Your orator further alleges that the said New Orleans and Carrollton Railroad Company refuses to pay the said amount and refuses to
26 permit the property of the said partnership of Beauregard, May, and Graham, now illegally in its possession, to be applied to the payment of the said debt due to your orator; and the said Beauregard, May, and Graham, and the said Bonneval, Binder, and Hernandez, and all other parties to said illegal conveyances, having neglected and refused to pay the said debt, and your orator being remediless in the premises according to the strictness of the rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; your orator therefore humbly prays that there be decreed by this hon. court to be due to your orator, receiver as aforesaid, by the said partnership of Beauregard, May, and Graham, the said sum of ($237,008.89) two hundred and thirty-seven thousand and eight & $\frac{89}{100}$ dollars, with five per cent. per annum interest from May 13th, 1867, until paid, and costs of suit, and by each of said partners one-third of said debt; and, also, that said New Orleans
27 and Carrollton Railroad Company be condemned by the decree of this honorable court to pay to your orator the said sum of two hundred and thirty-seven and eight & $\frac{89}{100}$ dollars, with interest as aforesaid, and all costs; and, further, that so far as your orator is concerned, and the rights he represents, that all of the before-mentioned transfers and conveyances of the lease of the said railroad, its franchises, &c., &c., and of all the property of said partnership of Beauregard, May and Graham be declared null and void, and that the said property be declared subject to a privilege and lien in favor of your orator for the amount due by said partnership to said bank, to be decreed as aforesaid; and that the same be seized and sold under the order and direction of this honorable court to pay the said amount, to wit, the unexpired term of the said lease to Beauregard, with all the privileges and franchises thereunto belonging, the stock and rolling-stock of said railroad, all the property ever purchased by the said firm of Beaure-
28 gard, May and Graham, or by the individual members thereof, for the use or benefit of the said firm, together with all the improvements and rights attached thereto, and all the other property described in the said acts of transfer and conveyance which belonged to the said firm of Beauregard, May and Graham, or of which they acquired the use, which are now in possession or control of said railroad company under and by virtue of any of the said illegal transfers and conveyances, and for all other relief in the premises, &c., &c.

To the end, therefore, that the said defendants may be ordered to do what is just and proper in the premises, and that the necessary decrees therefor may be obtained, and that your orator may have such other and further relief in the premises as the nature of the case requires, may it please this hon. court to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said New Orleans and Carrollton Railroad Company, to be served
29 on the president thereof, or upon any competent officer of said company, to the said G. T. Beauregard, the said Thomas P. May, and the said A. C. Graham, individually, and as members of the partnership; also to Alexander Bonneval, G. W. Binder, and Joseph Hernandez, and the Fourth National Bank of New York, defendants, commanding each

of said parties at a certain time and under a certain penalty, therein to be named and limited, personally to be and appear before this honorable court, and then and there full, true, direct, and perfect answers make to all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree therein as to this hon. court shall seem meet, &c., &c.

And your orator will ever pray, etc.

(Signed) J. D. ROUSE,
WM. W. KING,
Solicitors for Compl't.

EXHIBITS A, B, C, D, E, F, G, H, I, J, K, L, M, N, AND O.—FILED WITH BILL OF COMPLAINT, AUGUST 2ND, 1873.

30 EXHIBIT A.

Lease of the New Orleans and Carrollton Railroad to G. T. Beauregard.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that on this twelfth day of April, eighteen hundred and sixty-six, before me, Selim Magner, a notary public duly commissioned and sworn, in and for the parish of Orleans, personally came and appeared George Currie Duncan, esquire, of this city, president of, and herein acting for the New Orleans and Carrollton Railroad Company, and moreover authorized to act in the premises by virtue of a resolution of the board of directors of said company, adopted at their meeting held on the tenth day of April, current, a certified copy whereof is hereunto annexed as part hereof, who declared that he does by these presents, for and on behalf of the said New Orleans and Carrollton Railroad Company, lease and let unto Gustave Toutant Beauregard,
31 esquire, of this city, here present and accepting for himself and his heirs, all and singular the railroad track and appurtenances of the said New Orleans and Carrollton Railroad Company, as hereinafter set forth, which lease is to commence and to be computed from the sixteenth day of April current, and to continue for the full term and space of twenty-five years from said date, and which lease is made on the following terms and conditions, to wit:

1st. Said lessee shall pay hire and rent for said railroad and appurtenances at the following rates, to wit: twenty thousand dollars for the first year of this lease, and an additional sum of five hundred dollars to each and every year's rent until the termination of this lease, by reason of which the last year's rent would amount to thirty-two thousand dollars, and all which rents shall be paid by said lessee monthly, at the end of each and every month of this lease, on the simple receipt of said company, the present lessors, or that of their duly authorized officer or agent.

2d. The main track of the said railroad, its branches (on Jack-
32 son street, Louisiana avenue and Napoleon avenue), sidling and turn tables, from Dublin street, Carrollton, to New Orleans, feed on hand, animals and other appurtenances of said road, rolling stock, and fixtures of stables, are hereby transferred free of charge to said lessee for the purposes of this lease; said lessee shall have the right of selling the steam engines, cars, and the appurtenances thereof, for the purpose of purchasing horse cars and horses or mules, and arranging for horse car purposes the railroad tracks from Tivoli Circle to Carrollton

and to the river; and on the express condition that he, the said lessee, shall furnish all additional sums required to complete said change or changes.

3d. The square of ground in Carrollton, bounded by Dublin, Thompson, Madison and First streets, with all the buildings, sheds, shops &c., thereon, are likewise leased and let to him, said Beauregard, for the term and space of one year from the date of this lease, at a rent of fifteen hundred dollars, to be payable monthly, on the simple receipt of said company or their agent; the lessors however reserving to themselves the right of leaving on said square of ground such movable property as they may find or deem convenient, and furthermore the use of the second story office at Carrollton, and also the use of the store-room, provided the latter does not interfere with the current wants of the lessee or with his business.

33

4th. All rails, switches, cross-ties, and the appurtenances of the road under the passengers' depot presently leased for one year, shall revert to the said lessee at the expiration of said year.

5th. The said lessee shall construct at his own cost and expense a double track on Baronne street from Triton Walk to Canal street, and a turn table at the junction of said two streets, or a single track through St. Charles and Canal streets to Baronne street, and in order to obtain the right of way for said purposes, the said lessee shall have the right of offering to the city authorities of New Orleans, on the part of the New Orleans and Carrollton Railroad Company, to abandon the privilege of using steam engines on said road within the city limits, but all right of way or any other privilege must be obtained in the name of said company, the present lessors, and for and during the whole term of the charter of said company.

34

6th. The said lessee shall hold and possess, free from rent during the whole term of this lease (he paying all taxes thereon), the square of ground at Napoleon avenue near the railroad, belonging to said company, the present lessors, and said lessee shall have the right to construct on said square of ground such buildings as shall be required for his railroad purposes, all which buildings and improvements shall be insured by him, said lessee, at his own cost; and all which buildings and improvements shall revert to the said lessors free of cost, charge or expense at the expiration of this lease; and in case any of the buildings which may be constructed by said lessee should be destroyed by fire, the amount of insurance recovered shall be immediately employed by said lessee in the reconstruction of said buildings.

35

7th. The said lessee shall have the use of the stables and other buildings belonging to said lessors on St. Charles street, between Felicity and Polymnia streets, free of all charges (including taxes and insurance), until the said lessee shall have constructed, for his railroad use, other stables and buildings on the square of ground situate on Napoleon avenue, near the railroad referred to in article sixth; provided that this privilege to said stables and buildings on St. Charles street shall terminate on the thirty-first of December, eighteen hundred and sixty-six.

8th. The said lessee shall have the right to take up such branch roads to the river, from Canal street to Carrol'ton, as may be intersected by other street railroads, and to use of such rails in repairing the main track on any other street from Tivoli Circle to Canal street; thence to Baronne street.

9th. Said lessee shall not have the right to use or claim the use of any

other stables or buildings belonging to said lessors than those already mentioned.

10th. At the expiration of this lease the said road, main track,
36 branches and sidlings, the feed on hand, materials for repairs, rolling stock, buildings, mules, horses, and other appurtenances of said road, rolling stock and appurtenances, and stables belonging or attached thereto, shall be equal in value to those delivered to said lessee, to be established by the inventory thereof to be taken as set forth in article eleventh of this lease, and the whole shall revert, all in good order and condition, to the said New Orleans and Carrol'ton Railroad Company, free of charges, expenses, liens, or incumbrances of any kind or nature.

11th. An inventory to be hereto annexed, signed by said parties and paraphed by me, notary, shall be taken by two experts, one appointed by said lessors and one by said lessee, of all the movable property of the said lessors to be delivered over to said lessee, to which inventory and every item therein shall be affixed the value thereof; and in case of difference of opinion or disagreement between said experts, an umpire shall be named by the said two experts; and it is hereby well under-
37 stood that should any loss accrue to said lessee upon sales which he may make of any portion of the movable property within eighteen months from the date hereof, such loss shall be in reduction of the amount of said inventory; provided always that after the expiration of said eighteen months from the date hereof, no claim for such reduction shall be made on the part of said lessee. And at the expiration of this lease the value of the movable property to be turned over by said lessee to said lessors shall be determined by experts in the same manner as above set forth.

12th. All taxes (government, State, or municipal) which may be assessed on the property leased, or on its gross receipts or income, shall be borne and paid for by the said lessee during the term of this lease, and the said lessee shall assume all the obligations imposed by the charter of said company and be personally responsible, with his securities hereinafter named, should any violation thereof impair the rights of said New Orleans and Carrolton Railroad Company.

38 13th. The said lessee also does assume all liabilities for accident to limb, life, or property, occurring on the road during the term of this lease.

14th. In case the said lessee should at any time during the term of this lease fail or refuse to pay the rent as stipulated, the said lessors shall have the right to rescind this present lease, and in that event the lessee shall have no claim for remuneration for any improvements or additions made by him to the road or its appurtenances.

15th. All the presently leased premises, the branches, rolling stock, and other appurtenances, shall be transferred to said lessee, on the sixteenth day of April current, free from all claims for debts, taxes due, and other similar incumbrances, and the lease for the office of said railroad, at No. 15½ on Baronne street, shall likewise be transferred to said lessee, who shall pay the present rent for the same until the first of November, 1866, the term of said lease.

16th. The said lessee, after obtaining the consent of the mayor and council of Carrollton, shall have the use, during the term of
39 this lease, of that portion of the Jefferson and Lake Pontchartrain Railway Company, extending from the New Orleans and Carrollton Railroad Company depot to the upper limit of the town of Carrollton, he, said lessee, in such case, paying to the said New Orleans and Carrollton Railroad Company the value of the iron now on said portion

of said road, which he agrees to return in good order and condition at the end of this lease to the said New Orleans and Carrollton Railroad Company.

17th. And it is furthermore agreed that the president and secretary of said New Orleans and Carrollton Railroad Company shall at all times have free passage on the cars of said lessee.

18th. The said lessee shall not have the right of transferring the lease or of underletting the presently leased premises, without the written consent of the board of directors of the said New Orleans and Carrollton Railroad Company.

And thereupon personally came and appeared, and intervened
40 to this act, Messrs. Thomas P. May and Augustus C. Graham, both of this city, who having taken cognizance of this present act of lease, declared that they do hereby bind themselves and their heirs in solido, with the said present lessee to said New Orleans and Carrollton Railroad Company, their successors and assigns, as well for the true and faithful compliance, on the part of said Beauregard, with all the clauses, conditions and stipulations herein contained, as for the true and punctual payment of the whole of the rents specified herein. The U. S. internal revenue stamps of sixty-five dollars on this act are hereto attached.

This done and passed in my office, at New Orleans aforesaid, on the day, month and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, who sign these presents with the said appearers, and me, notary, after reading thereof.

And before signing these presents, it has been further agreed and stipulated that said lessee shall have and enjoy joint use and
41 occupation with the lessors of the Tivoli Circle depot, up to and until the 31st day of December next (1866), provided the lessee does not interfere with the uses that the lessors may have of the same, which uses however shall not interfere with the occupation of said building by the lessee as a passenger and freight shed, and provided moreover that said lessee shall keep up the fences around said property, and shall claim no part of the revenues derived by the lessors from the stalls, &c., in said building.

(Signed) G. CURRIE DUNCAN,
President.
G. T. BEAUREGARD.
A. C. GRAHAM.
T. P. MAY.

(Signed) JAS. FAHEY.
E. G. GOTTSCHALK.

S. MAGNER, *Notary Public.*

A true copy.
New Orleans, La., July 9, 1869.

S. MAGNER,
Notary Public.

EXHIBIT B.

Co-partnership between G. T. Beauregard and Thomas P. May and Aug. C. Graham.

42 UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that this day, the eighteenth of April, in the year of our Lord eighteen hundred and sixty-six, and in the ninetieth of American

Independence, before me, Amédée Ducatel, notary public, duly commissioned and sworn in and for this city and the parish of Orleans, therein residing, and in presence of the undersigned witnesses, personally came and appeared Mr. Gustave Toutant Beauregard, residing in this city of the first part; Mr. Thomas P. May, also of this city, of the second part; and Mr. Augustus C. Graham, residing also in this city, of the third part.

Which said appearers declared, that for and in consideration of the mutual credit and faithful confidence that each of them has reposed in the others, and with a view to their mutual advantage and benefit, they have entered into the following articles of agreement:

43 ARTICLE I. Gustave Toutant Beauregard shall obtain in his name, but for the joint account of the appearers, the lease of the New Orleans and Carrollton Railroad. He shall take charge, conduct, manage, and direct the undertaking at a salary of five thousand dollars per annum, payable monthly at the rate of four hundred and sixteen dollars sixty-six cents and two-thirds per month; promising and binding himself to do his best endeavors, to the utmost of his skill and ability, for their mutual advantage; and also he shall have the right to appoint his assistants with proper salaries.

ARTICLE II. The said Thomas P. May and Augustus C. Graham shall furnish the amount of money necessary to carry out the enterprize; which amount shall not exceed one hundred and fifty thousand dollars for each of them, making an aggregate amount of three hundred thousand dollars. The said T. P. May and A. C. Graham shall be reimbursed in capital and interest at the rate of eight per cent. per annum

44 from the annual net profit of the enterprize.

ARTICLE III. After the payment of said capital and interest as aforesaid, the annual net profits, gains, and increase as shall arise, shall be equally divided between the said appearers, share and share alike; and also all losses as shall happen by bad debts or otherwise, shall be paid and borne equally by them.

ARTICLE IV. The said T. P. May and A. C. Graham promise and bind themselves to pay the above sum of one hundred and fifty thousand dollars, each of them, in manner following, to wit: Twenty thousand dollars (each of them) immediately after the signing of the lease by the "New Orleans and Carrollton Railroad Company;" then twenty thousand dollars (each of them) per month during the next four succeeding months; then ten thousand dollars per month (should they be required by the lessee G. T. Beauregard), until the final payment of the said sum of one hundred and fifty thousand dollars by each of them.

45 ARTICLE V. There shall be kept just and true books of accounts, wherein shall be entered as well all the money received and expended in and about said enterprize, as also all commodities and merchandises bought by reason and on account of the present copartnership between the appearers, and all other matters and things in any wise belonging or appertaining thereto, so that either of them may, at any time, have free access thereto.

ARTICLE VI. On the first of each month a statement of amounts received and expended during the preceding month shall be furnished to the said Thomas P. May and A. C. Graham, by said G. T. Beauregard, who will make his deposits in the First National Bank, in this city.

ARTICLE VII. This copartnership shall continue from the date of the lease by the said "New Orleans and Carrollton Railroad Company" to the said G. T. Beauregard, for and during and to the full end and term of twenty-five years next ensuing.

46 ARTICLE VIII. In case any of the said copartners shall happen to decease before the expiration of the said term of twenty-five years, the present copartnership shall continue between the surviving copartners and the heirs or assigns of the deceased, under the same charges, clauses, and conditions as above set forth.

And the said parties hereby bind themselves, their heirs, executors, and administrators for the faithful performance of all and every of the above agreement.

Thus done, passed, and concluded in my office, at New Orleans, the day, month, and year first above written, in presence of Messrs. Henry Ducatel and André Pélanne, competent witnesses, who have signed these presents, together with the said appearers and me, the notary.

(Signed) T. P. MAY.
A. C. GRAHAM.
G. T. BEAUREGARD.

HENRY DUCATEL.
A. PÉLANNE.

AMÉDÉE DUCATEL, *N. P.*

A true copy of the original.

AMÉDÉE DUCATEL,
Notary Public.

47 EXHIBIT C.

Sale of property by Wm. C. Raymond to G. T. Beauregard, T. P. May, and A. C. Graham.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and the ninetieth of the Independence of the United States of America, before me, Amédée Ducatel, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. William C. Raymond, residing in this city, who declared that, for the consideration and on the terms and conditions hereinafter expressed, he does by these presents grant, bargain, and sell, from this day and forever, under all lawful warranty, and with substitution and subrogation to all his rights and actions of warranty against all
48 vendors or former proprietors, unto Messrs. Gustave Toutant Beauregard, Thomas P. May, and Augustus C. Graham, residing also in this city, here present and accepting, purchasing for themselves, their heirs and assigns, in the proportion of one undivided third, each, and acknowledging delivery and due possession thereof, a certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging, or in anywise appertaining, situated in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Apollo streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of A. Mazureau, notary in this city, being the same acquired by the said Wm. C. Raymond from Carl Kohn, as per act executed before W. Shannon, notary in this city, dated the sixteenth day of May, eighteen hundred
49 and sixty-two, and registered in the conveyance office of the

parish of Jefferson, book H, folio 574, to have and to hold the said square of ground unto the said purchasers, their heirs and assigns, for their only proper use and behoof forever. From the receipts exhibited to me, notary, all the taxes on said square of ground have been paid up to the year eighteen hundred and sixty-five inclusive.

This sale is made and accepted for and in consideration of the price and sum of twelve thousand five hundred dollars, in deduction of which that of four thousand one hundred sixty-six cents and two-thirds, by the said purchasers has been in hand well and truly paid in ready current money, the receipt whereof is hereby acknowledged, and acquittance therefore granted the said Wm. C. Raymond, vendor. And for the balance, the said purchasers have furnished two promissory notes, by them subscribed to the order of and endorsed by themselves, dated this day, for the sum of four thousand one hundred and sixty-six
50 dollars sixty-six and two-thirds cents each, bearing interest at the rate of eight per centum per annum from date until final payment, and payable respectively one and two years after date. Which notes, marked and signed ne varietur by me, the notary undersigned, to be herewith identified, were handed over and delivered to the said Wm. C. Raymond, who acknowledges said delivery.

Now, in order to secure the full and punctual payment of said notes at maturity, together with the payment of all interest and costs, even lawyer's fees, at the rate of five per cent. on the amount of said notes in case of judiciary proceedings, the said purchasers do hereby affect mortgage, and hypothecate specially, the above square of ground in favor of all bearers of the said notes; promising and binding themselves not to sell, alienate, mortgage, or encumber the said square of ground to the prejudice of the present act.

By reference to the annexed certificate of the recorder of mortgages in and for the parish of Jefferson, it will appear that there is no
51 mortgage whatsoever standing in the name of the present vendor and recorded against said square of ground, but that it is subject to the drainage tax.

The said vendor declares that he is tutor of two minor children, but that having furnished a special mortgage in their favor, by act befor' Thomas Layton, notary in this city, dated the twenty-ninth day of March, eighteen hundred and fifty-three, there exists no general and tacit mortgage against him.

And now personally appeared Mistress Mary Ann Laidlaw, wife, of lawful age, of the said Wm. C. Raymond, who, after the undersigned notary had explained to her verbally the nature and purport of the foregoing act of sale from her said husband to the said Beauregard, May, and Graham, declared that she is desirous of releasing in favor of the said purchasers the square of ground hereinbefore sold from the matrimonial, dotal, paraphernal, and other rights, and from all claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said Wm. C. Raymond or otherwise.

52 Whereupon the undersigned notary did explain verbally to the said Mistress Raymond, out of the presence of her said husband, the nature of her rights, which are here detailed, to wit: The wife has a legal mortgage on the property of her husband in the following cases: 1st. For the restitution of her dowry, and for the reinvestment of the the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; 2d. For the restitution and the reinvestment of the dotal property which came to

her after marriage, either by succession or donation, from the day the succession was opened or the donation perfected; 3d. For the reimbursing the amount of her paraphernal property alienated by her and received by her husband, or otherwise disposed of for his individual interest; 4th. To indemnify her for debts which she may have contracted with her husband; and 5th. For the donations which may have been made to her by her husband on account of their marriage;
53 and that by renouncing said rights on the square of ground hereinbefore sold, she would deprive herself irrevocably of all recourse thereon.

And the said Mistress Raymond did thereupon declare to me, notary, that she fully understood the nature and extent of her said rights on the property of her said husband, and that she nevertheless did persist in her intention of renouncing the same in favor of the said purchasers on the property hereinbefore sold.

And the said Wm. C. Raymond being now present, assisting and authorizing his said wife in the execution of these presents, and consenting thereto, she, the said Mistress Raymond, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said rights and mortgages on the property hereinbefore described and sold, in favor of the said Beauregard, May, and Graham, binding herself and her heirs at all times to sustain and ac-
54 knowledge the validity of this renunciation.

Thus done and passed in my office at the city of New Orleans aforesaid, in the presence of Henry Ducatel and André Pélane, both of this city, competent witnesses, who hereunto sign their names with the said parties and me the said notary.

(Signed)

M. A. L. RAYMOND.
G. T. BEAUREGARD.
T. P. MAY.
A. C. GRAHAM.
W. C. RAYMOND.

A. PÉLANNE.
HENRY DUCATEL.
AMÉDÉE DUCATEL, *N. P.*

AMÉDÉE DUCATEL,
Notary Public.

EXHIBIT D.

Sale of property by Samuel Arthur Kohn to G. T. Beauregard, Thos. F. May, and A. C. Graham.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it remembered, that on this thirtieth day of the month of April, one thousand eight hundred and sixty-six, and the ninetieth of the Independence of the United States of America, before me,
55 Amédée Ducatel, a notary public, in and for the city and parish of New Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Samuel Arthur Kohn, residing in this city.

Which said appearer declared, that for the consideration and on the terms and conditions hereinafter expressed, he does, by these presents,

grant, bargain, sell, convey, transfer, assign and set over, with all legal warranty, from this day and forever, and with substitution and subrogation to all his rights and actions of warranty, against all vendors or former proprietors, unto Messrs. Gustave Toutant Beauregard, Thomas P. May and Augustus C. Graham, residing in this city, here present and accepting, purchasing for themselves, their heirs and assigns in the proportion of one-third, each, and acknowledging delivery and due possession thereof, a certain square of ground, with all the rights,
56 privileges and appurtenances thereunto belonging or in anywise appertaining, situated in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, notary in this city; the said square comprised between Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots numbered from one to twenty-four inclusive, being the same acquired by the said Sam'l Arthur Kohn from the estate of Sam'l Kohn, as per act executed before Adolphe Mazureau, notary, dated the twenty-sixth day of May, eighteen hundred and fifty-four, registered in the conveyance office of the parish of Jefferson, book "E," folio 224.

All taxes on said lot or square of ground have been paid up to the year eighteen hundred and sixty-four, inclusive, as appears from the receipts exhibited to me, notary undersigned. And the said vendor, Samuel Arthur Kohn, promises and binds himself to pay those for the year now last past (1865) whenever required so to do.

57 And by reference to the annexed certificate of the recorder of mortgages for the parish of Jefferson, it will appear that there is no mortgage whatsoever standing in the name of the present vendor and recorded against said square of ground. The same certificate shows that the said square of ground is subject to the drainage tax.

To have and to hold the said square of ground unto the said Beauregard, May & Graham, their heirs and assigns, to their proper use and behoof forever. And the said Samuel Arther Kohn for himself, his heirs or assigns, to the said Beauregard, May, and Graham, their heirs and assigns, shall and will warrant, and forever defend against the lawful claims of all persons whomsoever, by these presents, and the said vendor does moreover subrogate the said purchasers to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendors of his vendor, fully authorizing
58 the said purchasers to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the total price and sum of eight thousand dollars, in deduction of which that of two thousand six hundred and sixty-six dollars sixty-six cents and two-thirds by the said purchasers has been in hand well and truly paid in ready current money, the receipt whereof is hereby acknowledged, and acquittance therefor granted by the said S. A. Kohn, vendor. And for the balance, the said purchasers have furnished two promissory notes, by them subscribed to the order of and endorsed by themselves, dated this day, for the sum of two thousand six hundred and sixty-six dollars sixty-six cents and two-thirds each, bearing interest at the rate of eight per cent. per annum from date until payment, and payable re-
59 spectively one and two years after dates, which notes, marked and signed ne varietur by me, the notary undersigned, to be herewith identified, were handed over and delivered to the said vendor, who acknowledges said delivery.

Now in order to secure the full and punctual payment of said notes at maturity, together with the payment of all interest and costs, even lawyer's fees at the rate of five per cent. on the amount of said notes in case of judiciary proceedings, the said purchasers do hereby effect mortgage, and specially the above square of ground, in favor of all bearers of the said notes; promising not to sell, alienate, mortgage, or encumber the said square of ground to the prejudice of this act.

Thus done and passed in my office at the said city of New Orleans, in the presence of Messrs. Henry Ducatel and André Pélanne, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties and me the said notary, after the reading of the act.

(Signed) G. T. BEAUREGARD.
T. P. MAY.
A. C. GRAHAM.
ARTHUR KOHN.

60 HENRY DUCATEL.
A. PELANNE.
AMÉDÉE DUCATEL, *N. P.*

AMEDEE DUCATEL,
Notary Public.

EXHIBIT E.

Sale of property, New Orleans and Carrollton Railroad Company to G. T. Beauregard, lessee.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that on this twenty-ninth day of June, 1866, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans, personally came and appeared George Currie Duncan, esq., president of the New Orleans and Carrollton Railroad Company, and herein acting by virtue of a resolution of the board of directors of said company, adopted at their sitting of the 18th of December, 1865, a true copy of which is annexed to an act of deposit, passed before me on the 14th of February, 1866, who declared that for the consideration hereinafter set forth he does, in his said quality,
61 by these presents grant, bargain, and sell, with all legal warranties, and with subrogation to all the rights and actions in warranty of said New Orleans and Carrollton Railroad Company against all preceeding vendors or possessors, unto Gustave Toutant Beauregard, esq., of this city, lessee of the New Orleans and Carrollton Railroad, herein represented by his attorney in fact, Thomas P. May, esq., present and accepting for said Beauregard, lessee aforesaid, his heirs and assigns, and acknowledging possession thereof, a certain piece of portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle bounded by Levee and First streets and Carrollton avenue, and measuring, more or less, five hundred and eighteen front on Carrollton avenue, six hundred and eleven feet two inches; one and a half lines on First street, and seven hundred and ninety-eight feet four inches in front on Levee street, which measures, however, are not guaranteed by said company, present vendors,
62 he, said May, for said Beauregard, accepting said property subject to such measure as the same may contain or have on each of said streets, together with all the buildings and improvement'

thereon and appurtenances thereof, and all rights, ways, servitudes, privileges, and advantages thereunto belonging.

Which portion of ground forms part of certain property acquired by the present vendors by purchase from L. Millaudon, the Canal Bank, Samuel Kohn, and John Slidell, by act passed before G. R. Stringer, late notary, on 4th June, 1833; to have and to hold the said property unto the said Beauregard, as lessee aforesaid, his heirs and assigns, forever.

It is hereby understood that said New Orleans and Carrollton Railroad Company shall be entitled to all the rents for the presently sold property up to the first of July next. By reference to the hereunto annexed certificate of the recorder of the parish of Jefferson it will appear that said property is forfeited to the State of Louisiana for taxes of the years 1852 to 1856 inclusive, and 1860. But, as the said railroad
63 company is exempt from the payment of taxes up to the present year, by its charter, as the same has also been certified to by H. Peralta, auditor of the State, on a mortgage certificate annexed to a sale to F. Fisher, passed before me, notary, on the 20th of March, 1866, said inscriptions of forfeiture are null and void; and said property stands furthermore encumbered, First. By the mortgage granted by said company by act passed before me, notary, on the 29th January, 1857, in favor of Louis Flarval Générès, on said property, and other to secure payment of one hundred and fifty thousand dollars, amount of one hundred and fifty bonds, of one thousand dollars each, dated 15th January, 1857, payable ten years after date, with eight per cent. interest per annum, payable semi-annually, for which coupons were granted. Third. And by the privilege which might result from the registry of a lease, dated 24th October, 1865, by which it appears that said railroad company leased to P. Williams the buildings known
64 as the "Carrollton Hotel" for two years, to commence from the first of November, 1865, and to terminate on the thirty-first of October, 1867, subject to which lease this act accepted.

This sale is made for and in consideration of the price and sum of twenty-six thousand dollars, which the said Duncan, president aforesaid, hereby acknowledges to have received in manner following, to wit: Eight thousand six hundred and sixty-six dollars sixty-six and two-thirds cents in ready money, for which he grants acquittance, and for the balance the said attorney in fact has subscribed for and in the name of said G. T. Beauregard, lessee, two several promissory notes to the order of and endorsed by said May and Augustus C. Graham, dated this day, each for eight thousand six hundred and sixty-six dollars sixty six and two-thirds cents, payable respectively at one and two years, at the First National Bank of New Orleans, with interest
65 thereon at the rate of seven per cent. per annum from date until maturity, and eight per cent. thereafter until paid. Which notes have been duly paraphed ne varietur by me, notary, to identify the same herewith.

And in order to secure the payment of said promissory notes in capital and all interest thereon, as aforesaid, special mortgage in favor of said railroad company, and the future holder or holders of said notes, is hereby retained on the property presently sold; the said attorney in fact hereby binding his said constituent not to sell, alienate or encumber the same to the prejudice of this act. And the said May furthermore binds his said constituent to keep the buildings on said property constantly insured against loss by fire to an amount not less than eight thousand dollars, and to transfer the policy of insurance to the said railroad

company, until the full and final payment of said notes; hereby
66 agreeing that the said railroad company shall have the right to transfer such policy to the future holder or holders of said notes, and in case of failure on the part of said Beauregard to effect such insurance, the holder or holders of said notes shall have the right to do so (should they deem proper to exercise the same), and all premiums of insurance thus paid shall remain secured by the mortgage herein granted.

And to these presents personally came and appeared Richard J. Evans, esq., of this city, who produced unto me, notary, the above mentioned one hundred and fifty bonds, and coupons thereon, and declared that he does hereby release and discharge the presently sold property from the effects of said mortgage, securing the payment of said bonds, and authorizes the recorder of mortgages for the parish of Jefferson to erase and cancel the same, so far as said property is concerned, and no further.

And I, notary, made mention of this partial release on the face of said bonds. The United States internal revenue stamps of twenty-
67 six dollars on this act are hereto attached.

Done and passed in my office, at New Orleans, aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

(Signed) G. CURRIE DUNCAN, *President.*
T. P. MAY.
RICHARD J. EVANS.
JAS. FAHEY.
E. G. GOTTSCHALK.
S. MAGNER,
Notary Public.

A. true copy.
New Orleans, 9th July, 1869.

S. MAGNAR,
Notary Public.

EXHIBIT F.

Sale of property, New Orleans and Carrollton Railroad Company, to G. T. Beauregard, lessee.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this fifteenth day of January, eighteen hundred and sixty-seven, before me, Selem Magner, a notary public in and
68 for this city and the parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared George Currie Duncan, esquire, of this city, herein acting in his quality of president of the "New Orleans and Carrollton Railroad Company," and moreover by virtue of a resolution of the directors of said company adopted at their sitting of the sixteenth of November, 1866, a certified copy whereof is annexed to an act of sale from said New Orleans and Carrollton Railroad Company to A. J. Fitzpatrick, on the seventeenth of December, 1866, passed before me, notary, who declared that for the consider-

ation hereinafter set forth he does in his said quality, by these presents, grant, bargain and sell, with all legal warranties, and with substitution and subrogation to all the rights and actions in warranty against all preceding vendors or possessors, unto Gustave Toutant Beauregard, esquire, of this city, purchasing as lessee of New Orleans and
69 Carrollton Railroad Company here present, acknowledging possession, and accepting in his said capacity for himself and assigns, seven certain lots of ground situate in the first district of this city, in the square bounded by St. Charles, Felicity, Apollo or Carondelet, and Polynia streets, designated by the Nos. one, two, three, four, five, six, and seven, on a plan deposited in my office as plan No. 116, according to which plan said lots measure as follows, to wit: Lot No. one measures thirty-six feet nine inches front on St. Charles street by a depth of ninety-four feet between parallel lines; lots two, three, four, and five, immediately in the rear of lot number one, adjoin each other, and measure together about one hundred an' thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to St. Charles street, and contiguous to the rear line of lot number one, about eighty-two feet six inches on the side nearest to
70 Apollo, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear; and lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street by a depth of one hundred and twenty feet between parallel lines.

Together with all and singular the buildings and improvements thereon and appurtenances thereof, known as *as* the "Horse Station," and all the rights, ways, and servitudes thereunto belonging or in any wise appertaining.

Which property forms part of certain real estate acquired by said company, as follows, to wit: From P. Plique, f. m. c., per act before the late L. Hermann, notary, on the 18th July, 1846; from James C. Parker, per act before W. Y. Lewis, late notary, on the 22d March, 1836; from the sheriff of the parish of Orleans, per act before the late Theo-
71 dore Fureaud, notary public, on the ninth of February, 1839; and from Pierre Michel, per act before Lucien Hermann, late notary public, on the 16th of March, 1847.

Said Duncan does hereby bind said company to pay the taxes due, or to become due, on said property for the year 1866, when collectable.

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their only proper use and behoof, forever.

This sale is made for and in consideration of the price and sum of twenty-six thousand dollars, which the said Duncan, in his said quality, hereby acknowledges to have received in the manner following, to wit: Eight thousand six hundred and sixty dollars sixty-six two-thirds cents in ready money, for which he grants acquittance and discharge; and for the balance of said purchase price, the said purchaser has furnished four several promissory notes to the order of and by Thomas P. May endorsed, dated seventeenth of December, eighteen hundred and
72 sixty-six, each for the sum of four thousand three hundred and thirty-three dollars thirty-three and one third cents, payable respectively, two marked 1 and 2 in one year, and two marked 1 and 2 in two years, at the Canal Bank in this city, with interest thereon at the rate of eight per cent. per annum from date until final payment, at the rate of eight per cent. per annum as a penal clause, which notes have

been duly paraphed ne varietur by me, notary, to identify the same herewith.

And in order to secure the payment of said promissory notes in capital and all interests thereon, as aforesaid, vendor's privilege and special mortgage in favor of said vendor and the future holder or holders of said notes is hereby retained on the property presently sold, the said purchaser hereby binding himself and his heirs not to sell, alienate, or encumber the same to the prejudice of this act.

And the said purchaser furthermore binds himself to keep the
73 buildings on said property constantly insured against the loss by fire to an amount not less than seventeen thousand five hundred dollars, and to transfer the policy of insurance to the said vendor until the full and final payment of the said notes, hereby consenting and agreeing that said vendor shall have the right to transfer such policy to any future holder or holders of the said notes, and that in case of failure on the part of the said purchaser to effect such insurance, the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the mortgage herein granted; but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

By reference to the annexed certificate of the recorder of mortgages
in and for this parish, it appears that said property stands en-
74 cumbered in the name of said company; first, by the draining privileges, of which said purchaser binds himself to pay the balance to become due thereon; second, by the mortgage granted by said company in favor of L. F. Générès, by act before me, notary, on the 29th January, 1857, to secure one hundred and fifty thousand dollars of bonds and interests thereon; which mortgage said Duncan binds himself to have cancelled without delay so far as the presently sold property is concerned. And the undersigned notary shall keep the proceeds of this sale until said property shall be clear of said mortgage.

The United States internal revenue stamps of twenty-six dollars are hereto attached.

Thus done and passed in my office, at New Orleans aforesaid, on the day, month and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, residing in this
city, who hereunto signed their names with said parties and
75 me, notary, after reading thereof.

Twenty-two words erased, null and void.

Approved.

(Signed) G. CURRIE DUNCAN, *President.*
G. T. BEAUREGARD, *Lessee.*

(Signed) E. G. GOTTSCHALK.
JAS. FAHEY.
S. MAGNER, *Notary Public.*

A true copy.
New Orleans, 9th July, 1869.

S. MAGNER.
Notary Public.

EXHIBIT H.

Transfer of lease, &c., by T. P. May et als. to the United States of America.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this sixteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified,
76 and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas P. May, of this city, herein acting as well for himself personally as in his capacity as the duly authorized agent and attorney in fact of Augustus Clason Graham, formerly of this city, but now a resident of the city and State of New York, by virtue of his power of attorney to said May, executed under private signature, dated at said city of New York on the 29th day of September, 1866, and annexed for reference to an act of agreement executed between said Augustus Clason Graham and Charles Hodges, before T. O. Stark, a notary in this city, on the twenty-third day of October, 1866; which said May declared, in his said several capacities, that, for the consideration and on the terms and conditions hereinafter expressed, he does by these presents cede, transfer, assign, and set over unto the United States of America, represented herein by John Jay Knox, the duly appointed and authorized agent of the United States of America, he being here also pres-
77 ent, and in his said capacity accepting for the United States of America and their assigns, and acknowledging delivery and possession thereof, all and singular the right, title, interest, share, property, claim, and demand of every nature and kind whatsoever of them, the said Thomas P. May and Augustus Clason Graham, and each of them, in and to the New Orleans and Carrollton Railroad, the lease and other franchises thereof, and the railroad tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging or in any wise appertaining, the same having been acquired by the said May and Graham by the provisions of certain articles of copartnership entered into between him and Gustave Toutant Beauregard for the purpose of conducting the business of the said railroad by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, eighteen hundred and sixty-six, by which said act of copartnership the said
78 parties thereto became interested in the proportions of one-third part and interest each in the lease and other franchises of the said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof; and which said lease was obtained by the said Beauregard for the joint account of himself and the said May and Graham, as per act of lease in the premises passed before S. Magner, a notary in this city, on the twelfth day of April, eighteen hundred and sixty-six, all relative to which will more fully appear by the provisions of the hereinbefore referred to acts of lease and copartnership, to which reference is hereby made.

But here the said Thomas P. May declared that although it would appear from the premises that the said Graham was a bona-fide owner of one-third part and interest in the lease of said railroad and appurtenances, yet in truth and in fact he, the said May, was the owner of the

interest therein which appears in the name of said Graham, and
79 the owner, with the said Beauregard, of the whole of the said lease and appurtenances in the proportion of two-thirds part and interest for himself, and one-third part and interest for the said Beauregard.

To have and to hold the said rights, title, and interest unto the said purchasers, their heirs and assigns, forever.

And the said Thomas P. May, as well for himself individually as in his capacity as agent of the said Augustus Clason Graham, hereby binds himself and his heirs, and also binds the said Augustus Clason Graham and his heirs, to warrant and forever defend the right, title, and interest herein transferred, against all legal claims and demands.

The said Thomas P. May, personally as well as in his capacity as agent of said Graham as aforesaid, hereby transfers to the said purchaser all the rights and actions of warranty to which he himself
80 or the said Graham is entitled against all persons or bodies corporate interested or concerned in the premises, subrogating the said purchaser to the said rights and actions, to be by them enjoyed and exercised in the same manner as they might have been by the said copartnership themselves, the said May and Graham, or either of them.

This sale is made for and in consideration of the price and sum of four hundred and eighty thousand dollars, the same being the estimated value of the two-thirds part and interest in the said railroad and lease herein transferred, which said consideration is made payable as follows, viz: Whereas the said Thomas P. May is indebted unto the United States of America in the sum of about one million and forty thousand dollars, the precise amount of the said indebtedness to be hereafter determined: Now, in settlement and liquidation of said consideration, the said John J. Knox, the agent aforesaid, hereby and in his said capacity, grants the said Thomas P. May an acquittance and discharge
81 for so much of the said price as may inure to or be received by the United States of America from the proceeds of the sale or disposition of said interest.

This act is executed in confirmation of the act of transfer of the said right, title, and interest in said railroad and the said lease thereof, and of other property, real and personal, belonging to the said Thomas P. May, passed before the undersigned notary on the fourteenth day of May, eighteen hundred and sixty-seven.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of James Graham and George Cenas, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

T. P. MAY.
JOHN J. KNOX.
JAS. GRAHAM.
GEO. CENAS.
ANDREW HERO, JR.,
Notary Public.

A true copy of the original act (duly stamped) extant in my notarial record.

New Orleans, July 7, 1869.

82 ANDREW HERO, JR.,
Notary Public.

EXHIBIT I.

Transfer by the United States to Alex. Bonneval, Joseph Hernandez, and Geo. Binder.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans:

Be it known that on this twenty-first day of the month of August, in the year of our Lord one thousand eight hundred and sixty-seven, of the Independence of the United States the ninety-second, before me, Gustave Le Gardeur, jr., a notary public, duly commissioned and sworn, in and for the parish and city, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. William Bell, of the city of Washington, District of Columbia, herein acting as the duly appointed and qualified special agent of the United States of America, by virtue of the credentials ex-
83 hibited to me, notary, which said appearer declared in his said capacity that for the consideration and upon the terms and conditions hereinafter expressed, he does by these presents sell, transfer, set over, and assign, with full warranty, unto Messrs. Alexander Bonneval, Joseph Hernandez, and George Binder, all of this city, they being here also present, accepting, and purchasing in the proportion of one undivided third part each, for themselves, their heirs and assigns, all and singular the rights, titles, interest, share, claims, and demands of every nature and kind whatever of the said United States of America in and to—

1st. The lease of the New Orleans and Carrollton Railroad and other franchises thereof, and the railroad tracks, rolling-stock, engines, cars, live stock, and other appurtenances thereunto belonging or in anywise appertaining.

2d. The copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutant Beauregard, for the purpose
84 of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred and sixty-six, by which said act of copartnership the said parties thereto became interested in the proportion of one third part and interest each in the lease and other franchises of said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof, and which said lease was obtained by the said G. T. Beauregard for the joint account of himself and the said May and Graham, as per act of lease in the premises passed before S. Magner, a notary in this city, on the twelfth day of April, one thousand eight hundred and sixty-six.

3d. And the real estate hereinafter described, to wit:

I. A certain square of ground with all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-six on a lithographic
85 plan deposited in the office of Adolphe Mazureau, a notary in this city; the said square comprised between Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging or in anywise appertaining, situate in the city of Jefferson,

parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Appollo streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city.

III. A certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle, bounded by Levee street, Carrollton avenue, and First street, and measuring,
86 more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches and one and a half line front an First street, and seven hundred and ninety-eight feet four inches front on Levee street, together with all the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging.

IV. Seven certain lots of ground situate in the First district of this city, in the square bounded by St. Charles, Felicity, Apollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of S. Magner, a notary in this city, as plan number one hundred and sixteen, according to which plan said lots measure as follows, to wit: Lot number one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet, between parallel lines; lots two, three, four and five, immediately in rear of said lot number one, adjoin each
87 other, and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest the St. Charles street, and contiguous to the rear line of lot number one, about eighty-two feet six inches on the side nearest to Apolla, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear. And lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines; together with all & singular the buildings and improvements thereon and appurtenances thereof, known as the "Horse Station," and all the rights, ways, servitudes, privileges and advantages thereunto belonging or in anywise appertaining.

Which said real estate was acquired for the use and account of
88 the aforesaid copartnership, as the books thereof will show, by four different purchases, to wit: One from S. A. Kohn, by act passed before A. Ducatel, a notary in this city, on the thirtieth day of April, one thousand eight hundred and sixty-six.

Another from W. C. Raymond, by act passed before the same notary on the fifth day of May, one thousand eight hundred and sixty-six.

The third from the New Orleans and Carrollton Railroad Company, by act passed before S. Magner, a notary in this city, on the twenty-ninth of June, one thousand eight hundred and sixty-six.

And the fourth and last from the same company, by act passed before the same notary on the fifteenth day of January, one thousand eight hundred and sixty-seven.

To have and to hold the hereinabove conveyed right to the interest, share, and demand of the United States in and to the above-described property unto the said Alexander Bonneval, Joseph Her-
89 nandez, and George Binder, their heirs and assigns, forever.

The United States are the owners of the hereinabove conveyed right, title, interest, share and demand in and to the above-described property; which right, title, interest, share and demand embrace, cover,

and amount to two-thirds of the whole, for having acquired the same from Thomas P. May and Augustus C. Graham, by act passed before Andrew Hero, jr., a notary in this city, on the sixteenth day of May, one thousand eight hundred and sixty-seven.

This sale is made and accepted for and in consideration of the price and sum of two hundred and eighty-eight thousand dollars for the two-thirds part or interest herein transferred in the above-described property, payable as follows, to wit: One hundred thousand dollars cash, one hundred thousand dollars in three months, and eighty-eight
90 thousand dollars in six months from the twentieth instant, when this contract was closed between the parties.

Wherefore the said Alexander Bonneval, Joseph Hernandez, and George Binder have presently and at the sight of the notary and witnesses undersigned, paid cash in United States currency the sum of one hundred thousand dollars to the said Wm. Bell, who, in his aforesaid capacity, acknowledges the receipt thereof, and grants full and ample acquittance for the same.

And for the balance of the price, to wit, one hundred and eighty-eight thousand dollars, the said purchasers have furnished two several promissory notes, dated the twentieth instant, made and subscribed by them to the order of, and endorsed by, Messrs. F. A. Ducros, L. E. Lemarié, and John Dolhonde, and made payable at the office of the assistant treasurer of the United States in this city; one for the sum of one hundred thousand dollars at three months, and the other for the sum
91 of eighty-eight thousand dollars, at six months after date. Which said notes, after being signed "Ne varietur" by the undersigned notary, to identify them herewith, were handed over and delivered to the said William Bell, who, in his said capacity, acknowledges the receipt thereof.

It is well understood that to secure the payment of the said two notes, the United States expressly retain the vendor's privilege as granted by the laws of the Louisiana.

It is also well understood, covenanted and agreed, that all the liabilities due and owing by said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule will appear, shall and will be, and the same are hereby, assumed by the purchasers.

It is further understood, covenanted, and agreed that the United States shall and will at all times protect the purchasers against and save them harmless from any claim which might at any time be
92 set up against them personally, or against the aforesaid copartnership, or the property, rights and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or assigns, for the recovery of or in reference to an overdraft of seventy-two thousand and nine dollars and nine cents, and a promissory note for forty thousand dollars—in all, one hundred and twelve thousand and nine dollars and nine cents—which apparently stand to the debit of G. T. Beauregard, as lessee of the New Orleans and Carrollton Railroad, but which in truth and reality are exclusively due and owing to the said bank by the said Thomas P. May. And, for the better protection of said purchasers, the government, through its agent aforesaid, agrees to, and does hereby, assume the payment of said indebtedness of one hundred and twelve thousand and nine dollars and nine cents to the said First National Bank of New Orleans.

And whereas a certain document purporting to be a transfer
93 of rights by Augustus C. Graham to the Fourth National Bank

of New York was signed, sealed, and delivered by the said A. C. Graham on the eighth day of May, one thousand eight hundred and sixty-seven, and subsequently, to wit, on the fifteenth day of May, one thousand eight hundred and sixty-seven, was registered in book I. J., folio 812, of the office of conveyances in and for the parish of Jefferson, in this State:

Now, therefore, and although the parties here refuse to acknowledge, but, on the contrary, strenuously deny and contest the legality, validity and effect of said document, yet it is expressly agreed by and between said parties that the Government of the United States shall and will at all times warrant and protect the purchasers herein against the said document and the effects thereof. And for the better protection and safety of the purchasers, it is further covenanted and agreed that the note for eighty-eight thousand dollars, hereinabove furnished,
94 shall not be disposed of, nor payment thereof demanded, until the aforesaid document and the registration thereof in the conveyance office shall have been annulled, set aside and cancelled. And in furtherance of this agreement, the said note of eighty-eight thousand dollars was handed over to the notary undersigned, who endorsed thereon the said agreement, and immediately returned the note to the said William Bell.

And to these presents came and intervened Stephen Richard Proctor, esq., of this city, and herein acting in behalf and as the duly authorized agent of G. T. Beauregard, esq., by virtue of an act of procuration passed before A. Ducatel, a notary in this city, on the sixth day of August, one thousand eight hundred and sixty-seven; which said appearer declared that he does by these presents accept notice of the foregoing transfer in the name and as agent aforesaid.

And also to these presents personally came and intervened
95 Samuel H. Torrey, esq., of this city, who declared that, as the attorney of the United States for the district of Louisiana, he has examined the present act and approves it. And the said district attorney further certifies that he has examined the instructions given to the said William Bell; that by these instructions he is fully authorized to enter into and execute the present contract, and that said contract has been approved by Governor Flanders and Mr. John S. Walton, assistant treasurer of the United States in this city.

The United States being sellers, the internal revenue stamps are not required.

Thus done and passed at New Orleans, in my office, on the day, month and year aforesaid, in the presence of Messrs. Gustave Le Gardeur, sr., and Armand Pitot, jr., competent witnesses, who have signed with the parties and me, notary, after reading the whole.

(O iginal signed) WM. BELL, *Special Agent.*
ALEX. BONNEVAL.
J. HERNANDEZ.
96 GEO. BINDER.
SAM'L H. TORREY,
U. S. Attorney.
G. T. BEAUREGARD,
per pro S. RICHARD PROCTER.
A. PITOT, JR.
G. LE GARDEUR.
G. LE GARDEUR, JR.,
Notary Public.

Schedule of debts and bills payable referred to.

Four notes for $4,333. 33 each, given for the Horse Station Stable, and payable 20th Dec., 1867, and 20th Dec., 1868, with 8 per cent. interest		$19,413 31
One note for $4,166 66, given for the square corner of Napoleon avenue and St. Charles street, and payable 8th May, 1868, with 8 per cent. interest		4,833 32
Six notes given to Dr. Elliott for 102 mules, payable at different dates within eight months, with interest		23,340 90
Amount due Carrollton Railroad Company for old rolling stock sold by the lessees and to be accounted for by them		10,000 00
Two notes of $8,666.66 each, given for the hotel at Carrollton, and payable 2d June, 1867, and 2d June, 1868, with interest, amounting to		$19,413 32
One note of $2,666.66, given for square of ground near Napoleon avenue, and payable 2d of May, 1868, with interest	3,091 10	
		22,504 42
Pay-rolls for month of July		10,521 17
Office rent for July, $125; railroad rent last half July, $854.16		979 16
U. S. tax on July receipts, $490.57; P. Makinny, $40		530 57
Stevens & Seymour, $20; Slark, Stauffer & Co., $94.35		114 35
Hall, Young & Co., $66.92; McDuff & Co., $4,119.10; Hill and Veazie, $24.40		4,210 42
Geddes & Shakespeare, $11.69; Kearny, Blais & Co., $56; H. Perry, $2.00		69 69
Horter, Peterson & Fenner, $24.05; G. N. Morison, $92.98; F. Fischer, $156.77		273 80
N. O. & C. R. R. Co., $414.85; John Rooney, $1,000; J. C. Davey, $1,324.90		2,739 75
Taylor & Co., $1,599.55; Bridge & Son, $45; Page & Co., $362.37		2,006 92
J. B. Slawson, $1,400; John Stephenson, $805.00; J. R. Turck, $100.00		2,305 00
Dr. Jos. Elliott, mules		9,000 00
Amount received for old rolling-stock sold since last statement of liabilities furnished and increasing the amount received for rolling-stock sold to $20,069.80		10,009 80
		$122,852 58
Amount required to complete the road, estimated		40,000 00
		$162,852 58

I certify that the above statement is correct.

(Signed) S. RICHARD PROCTER, *Treasurer.*

P. McBRIDE, *Bookkeeper.*

A true copy. One word erased, null.
New Orleans, July 8th, 1866.

G. LE GARDEUR, JR., *Notary Public.*

EXHIBIT J.

Articles of sale of the Carrollton Railroad by the United States to Bonneval et als.

This agreement, made and concluded this thirty-first day of October, A. D. one thousand eight hundred and sixty-seven, by and between Edward Jordan, Solicitor of the Treasury of the United States, acting with the approval of the Secretary of the Treasury for & on behalf of
99 the U. S., of the first part, and Alexander Bonneval, Joseph Hernandez, and George Binder, of the city of New Orleans, parish of Orleans, and State of Louisiana, of the second part, witnesseth:

That whereas an act was passed before Gustave Le Gardeur, jr., a notary public in the city of New Orleans, bearing date the 21st day of August, 1867, whereby William Bell, a special agent of the Treasury Department, undertook to convey to the said Alexander Bonneval, Joseph Hernandez, and George Binder all the rights, titles, interest, shares, claims, and demands of the United States in and to a certain lease of the New Orleans and Carrollton Railroad, and the copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutant Beauregard, for the purpose of conducting the business of said railroad, together with certain real estate acquired for the use and account of said copartnership, being the interest in said property which was acquired by the United States from Thomas P. May and Au-
100 gustus C. Graham, by act passed before Andrew Hero, jr., a notary in the city of New Orleans, on the 16th day of May, 1867; and whereas the terms and conditions set forth in said act dated August 21st, 1867, do not meet the approval of the Secretary of the Treasury, and are not in accordance with the proposals made by said Bonneval, Hernandez, and Binder on the 19th of August, 1867, for the purchase of said property, and accepted by William Bell, special agent, on the 20th day of August, 1867; and whereas it is also considered that, the interest of the United States in said property was not passed to said parties by said act passed before G. Le Gardeur, jr., notary public, on the 21st day of August, 1867; and whereas the said Edward Jordan, Solicitor of the Treasury, in pursuance of authority conferred upon him by law, has executed a conveyance of the interest of the United States in said property to said Bonneval, Hernandez, and Binder, bearing even date here-
101 with, as by reference thereto will more fully and at large appear:

Now, therefore, it is mutually understood and agreed between the parties hereto of the first and second parts, that the said last-mentioned conveyance, in connection with this agreement, shall be taken and accepted by said parties in place and instead of said act of conveyance of August 21st, 1867, and that any force and validity which said act may have shall cease and determine upon the execution hereof.

It is further mutually understood and agreed that the sale of said property was made for and in consideration of the price and sum of two hundred and eighty-eight thousand dollars, payable as follows, to wit: One hundred thousand dollars in cash, one hundred thousand dollars in three months, and eighty thousand dollars in six months from the twentieth day of August, 1867, when the contract was closed between the parties; and that the said Alexandre Bonneval, Joseph
102 Hernandez, and George Binder, on 21st day of August, 1867, in presence of G. Le Gardeur, jr., notary, paid cash in United States currency the sum of one hundred thousand dollars to the said William Bell, special agent on behalf of the United States, and for the

balance of the price, to wit, one hundred and eighty-eight thousand dollars, the said parties at the same time made two several promissory notes, dated August 20th, 1867, payable to the order of F. A. Ducros, L. E. Lemarié, and John Dolhonde, at the office of the assistant treasurer of the United States at New Orleans, and endorsed by said payees, one for the sum of one hundred thousand dollars at three months, and the other for the sum of eighty-eight thousand dollars at six months after date, which said notes were delivered to the said William Bell, special agent as aforesaid.

It is also understood that, to secure the payment of the said two notes, the United States expressly retain the vendor's privilege as
103 granted by the laws of Louisiana.

And it is also understood, covenanted, and agreed that all the liabilities due and owing by said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule, will appear, shall and will be, and the same are hereby, assumed by the purchasers.

It is further understood, covenanted, and agreed that the United States shall and will at all times protect the purchasers against and save them harmless from any claim which may at any time be set up against them personally, or against the said copartnership, or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or its assigns, for the recovery of, or in reference to, an overdraft of seventy-two thousand and nine dollars and nine cents, and a promissory note for forty thousand dollars, in
104 all one hundred and twelve thousand and nine dollars and nine cents, which apparently stand to the debit of G. T. Beauregard as lessee of the New Orleans and Carrollton Railroad, but which in truth and reality are exclusively due and owing to said bank by the said Thomas P. May.

And whereas a certain document, purporting to be a transfer of rights by Augustus C. Graham to the Fourth National Bank of New York, was signed, sealed, and delivered by the said A. C. Graham, on the eighth day of May, one thousand eight hundred and sixty-seven, and subsequently, to wit, on the 15th day of May, 1867, was registered in book 1J, folio 812, of the office of conveyances in and for the parish of Jefferson, in the State of Louisiana; now, therefore, and although the parties hereto refuse to acknowledge, but on the contrary deny and contest the legality, validity, and effect of said document, yet it is expressly agreed by and between said parties that the United States shall
105 and will at all times protect the purchasers against and save them harmless from the said document and the effects thereof.

And whereas the act passed before G. Le Gardeur, jr., notary, upon the 21st of August, 1867, herein above mentioned, contained a clause whereby, for the better protection and safety of the purchasers, it was covenanted and agreed that the aforesaid note for eighty-eight thousand dollars made by said purchasers should not be disposed of, nor payment thereof demanded, until the aforesaid document and the registration thereof in the conveyance office shall have been annulled, set aside, and cancelled, and in furtherance of said agreement the said notary public endorsed said agreement on said note; now, therefore, it is understood and agreed between the parties hereto that notwithstanding the said agreement and the endorsement thereof on said note, the said note shall be demandable and payable, at the maturity thereof,
106 in the same manner as if said agreement and endorsement had never been made, and that said endorsement shall be cancelled.

six, on a lithographic plan deposited in the office of Adolphe Mazureau, a notary, in the city of New Orleans, the said square comprised between Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four inclusive.

II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging or in anywise appertaining, situate in the city of Jefferson, parish of Jefferson, State of Louisina, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Apollo streets, and containing twenty-four lots, numbered from one to twenty-four inclusive, in conformity with a lithographic
113 plan deposited in the office of Adolphe Mazureau, a notary, in said city of New Orleans.

III. A certain piece or portion of land, situate in the town of Carrollton, parish of Jefferson, State of Louisiana, being a triangle, bounded by Levee street, Carrollton avenue, and First street, and measuring more or less five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches and one and a half line front on First street, and seven hundred and ninety eight feet four inches front on Levee street, together with all the buildings and improvements thereon, and appurtenances thereof, and the rights, ways, servitudes, privileges, and *and* advantages thereunto belonging.

IV. Seven certain lots of ground, situate in the first district of the said city of New Orleans, in square bounded by St. Charles, Felicity, Apollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven on a plan deposited
114 in the office of S. Magner, a notary in said city, as plan number one hundred and sixteen, according to which plan said lots measure as follows, to wit: Lot No. one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet between parallel lines; lots two, three, four, and five immediately in rear of said lot No. one, adjoin each other, and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to St. Charles street, and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Apollo, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear; and lots six and seven, adjoining each other, and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one
115 hundred and twenty feet between parallel lines, together with all and singular the buildings and improvements thereon and appurtenances thereof, known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or anywise appertaining.

Which said real estate was acquired for the use and account of the aforesaid copartnership, as the books thereof will show, by four different purchases, to wit:

One from S. A. Kohn, by act passed before A. Ducatel, a notary in the city of New Orleans, on the thirteenth day of April, one thousand eight hundred and sixty-six; another from William C. Raymond, by act passed before the same notary on the fifth day of May, one thousand eight hundred and sixty-six; the third from the New Orleans and Carrollton Railroad Company, by act passed before S. Magner, a notary in said city of New Orleans, on the twenty-ninth day of June,
116 one thousand eight hundred and sixty-six; and the fourth and

last from the same company, by act passed before the same notary on the fifteenth day of January, one thousand eight hundred and sixty-seven.

The interest in the above-described property intended to be hereby conveyed being the same which was acquired by the United States from Thomas P. May and Augustus C. Graham, by act passed before Andrew Hero, jr., a notary in the city of New Orleans, on the sixteenth day of May, one thousand eight hundred and sixty-seven, together with all rights, titles, interest, claims, and demands of the United States of, in, and to said property, rights, franchises, and privileges, from whatsoever source acquired.

To have and to hold the hereinabove conveyed rights, titles, interest, shares, claims, and demands of the United States in and to the above-described property unto the said Alexander Bonneval, Joseph
117 Hernandez, and George Binder, their heirs and assigns, forever.

Reserving, nevertheless, on behalf of the United States, the vendor's privilege granted by the laws of Louisiana to secure the payment of two promissory notes made by said Alexander Bonneval, Joseph Hernandez, and George Binder to the order and endorsed by F. A. Ducros, L. E. Lemarie, and John Dolhonde, and dated August 20, 1867; one for the sum of one hundred thousand dollars, at three months, and one for the sum of eighty eight thousand dollars, at six months after date; said notes having been given to the United States in payment of a portion of the purchase-money of the property hereinabove described.

In witness whereof the said Solicitor of the Treasury hath, in behalf of the United States, hereunto set his hand and affixed his official seal this thirty-first day of October, in the year one thousand eight hundred and sixty-seven.

(Signed) EDWARD JORDAN,
Solicitor of the Treasury.

118 Signed, sealed, and delivered in presence of—
(Signed) J. H. McKINNEY,
THOMAS DUTTON.

DISTRICT OF COLUMBIA,
City and County of Washington ss:

Be it remembered that on the thirty first day of October, in the year one thousand eight hundred and sixty-seven, before me, the undersigned, a commissioner resident in the District of Columbia, duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Edward Jourdan, Solicitor of the Treasury of the United States, to me known to be the individual named in and who executed the annexed instrument, and acknowledged to me that he did sign, seal and deliver the same as his free act and deed, on behalf of the United States, on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

119 In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

(Signed) N. CALLAN,
Commissioner for Louisiana in the District of Columbia.

STATE OF LOUISIANA,
City of New Orleans:

I, Selim Magner, a notary public in and for the parish of Orleans,

do hereby certify the above and foregoing instrument in writing to be a true and correct copy of the original document annexed to an act of deposit in my office, under date of the seventh of December, 1867.

In testimony whereof, I have hereunto set my hand and seal, at New Orleans aforesaid, on this ninth day of July, A. D. 1869.

S. MAGNER,
Notary Public.

EXHIBIT L.

Fusion between the New Orleans and Carrollton Railroad Co., G. T. Beauregard, Alexander Bonneval, Jos. Hernandez, and Geo. Binder.

STATE OF LOUISIANA,
120 *City of New Orleans:*

Be it known that on this fifteenth day of October, eighteen hundred and sixty-seven, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans and the city of New Orleans personally came and appeared—

1st. Benjamin Laurent Millaudon, esquire, of this city, president of the New Orleans and Carrollton Railroad Company, duly authorized to act in the premises by virtue of a resolution of the board of directors of said company, adopted at their sitting of the second of October, 1867, of which a certified copy is hereto annexed as part hereof, of the first part.

2nd. Stephen Richard Proctor, esquire, of this city, herein acting in behalf and as the duly authorized agent of Gustave Toutant Beauregard, esquire, also of this city, by virtue of two acts of procuration passed before A. Ducatel, a notary public in this city, on the third and sixth of August, 1867.

121 3d. George Binder, esquire, of this city, herein acting as well in his own name and behalf as in his quality of attorney in fact of Joseph Hernandez, also of this city, duly appointed per act of procuration passed before me, notary, on the twentieth of August, 1867.

4th. Alexander Bonneval, esquire, of this city.

Said Beauregard, Binder, Hernandez, and Bonneval being parties of the second part.

Which appearers mutually declared that taking as a basis an act of the legislature of this State, No. 59, approved March 9th, 1867, entitled "An act for the relief of the Carrollton Railroad Company," and furthermore the proposel made by said parties of the second part to the said New Orleans and Carrollton Railroad Company, party of the first part, a certified copy whereof is hereto annexed for reference as part hereof, together with the resolution of the board accepting the same, and

122 the approval of the majority of the stockholders consenting to make a fusion and consolidate the interests of the stockholders with the said parties of the second part, present owners of a lease made to said Beauregard by said railroad company by act passed before me, notary, on the twelfth of April, 1866: Now, therefore, the said parties agree, and hereby do mutually agree as follows, to wit:

1st. The capital stock, after the signature of this present act, having for object the consolidation of the two interests, shall be eight hundred thousand dollars, to be divided equally between the present stockholders of said company and the said parties of the second part, namely, four hundred thousand dollars for the stockholders and four hundred thousand dollars for the parties of the second part, each share to be of one hundred dollars.

2d. The present fusion to take place on condition that the said parties of the second part shall deliver to the said New Orleans and Carrollton Railroad Company, and shall put said company in immediate possession of all the property, real, personal, rights, title, interest, effects, and assets of whatsoever nature or kind appertaining to the Carrollton Railroad, and in which it may be interested, and whether the same stands in the name of said parties of the second part or in that of said railroad; and all which rights are held by said parties of the second part, namely, by said Beauregard, under a lease made to him by said Carrollton Railroad Company, by act passed before me, notary, on the twelfth of April, 1866, which lease, in consequence of the present fusion, is cancelled and annulled from this date, and by several purchases of real estate hereinafter mentioned, and by said Binder, Bonneval, and Hernandez, two-thirds by reason of the purchase made by them from the United States of America, by act before Gustave Le Gardeur, jr., a notary public in this city, on the twenty-first of August, 1867.

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3d. The New Orleans and Carrollton Railroad Company shall assume and be responsible for all the debts and liabilities of the said Carrollton Railroad Company, whether due by or claimed from the lessees or the stockholders, and whatever may be the cause, nature, or character and extent of said debts and liabilities, except however the liabilities hereinafter mentioned and due by said Binder, Hernandez, and Bonneval, and resulting from said act of purchase of the twenty-first of August, 1867.

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And now, in order to carry into effect said agreement, and to merge the interests and liabilities of the stockholders of the said New Orleans and Carrollton Railroad Company and of said parties of the second part, the New Orleans and Carrollton Railroad Company, herein represented by said Millaudon, president, present as aforesaid, is now put into and acknowledges to be in possession of—

1st. All and singular the rights, titles, and interest and other franchises of the said Carrollton Railroad and the railroad tracks.

125

2d. All the railroad improvements, the horses and mules, or whatsoever other live-stock, the cars, harness, rolling-stock, engines, and improvements and appurtenances thereof, of all which a detailed list or schedule is hereunto annexed for reference and as part hereof, duly signed by said parties and me, notary.

3d. All the bills receivable and interest thereon, amounting to the sum of eight thousand four hundred and eighty-one dollars and sixty cents, and the ready money, amounting to eleven thousand five hundred and fifty-nine dollars and five cents.

4th. All the rights, titles, interests, rights and actions in warranty of the parties of the second part in and to the following-described real estate, to wit:

1st. A certain square of ground, with the buildings and improvements thereon, situate in the city and parish of Jefferson, in this State, designated by the No. (66) sixty-six, in a lithographic plan deposited in the office of Adolphe Mazureau, notary public, in this city, the said square being comprised within Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

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2nd. A certain square of ground, together with the improvements, etc., thereon, situate in the city and parish of Jefferson, in this State, designated by the number sixty-five, comprised within Napoleon avenue, Berlin, Nayades, and Apollo streets, containing twenty-four lots,

numbered from one to twenty-four inclusive, on the above-mentioned plan.

3d. A certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle, bounded by Levee and First streets and Carrollton avenue, and measuring more
127 or less five hundred and eighteen feet front on Carrollton avenue, six hundred and seven feet two inches and a half line front on First street, and seven hundred and ninety-eight feet four inches front on Levee street, with the buildings, improvements, etc., thereon.

4th. Seven certain lots of ground situate in the first district of this city, in the square bounded by St. Charles, Felicity, Apollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven on a plan deposited in the office of the undersigned notary as plan number one hundred and sixteen, according to which plan said lots measure as follows, viz:

Lot number one, thirty-six feet nine inches front on St. Charles street by a depth of ninety-four feet, between parallel lines.

Lots two, three, four, and five, immediately in the rear of lot number one, adjoin each other, and measure together one hundred and thirty-two feet six inches front on Felicity st., about one hundred and
128 fourteen feet one inch on the line nearest to St. Charles street, and contiguous to the rear line of lot number one, about eighty-two feet six inches on the side nearest to Apollo, now Carondelet, street, and about one hundred and twenty-seven feet nine inches in the rear; and lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measuring each thirty-one feet eleven inches and five lines front on Polymnia street by a depth of one hundred and twenty feet, between parallel lines, together with the buildings and improvements thereon and appurtenances thereof, known as the Horse Station.

All which real estate was acquired by said Beauregard for account of the copartnership existing between him, Thomas P. May, and Augustus C. Graham by four different purchases, to wit: The firstly described
129 from S. A. Kohn, per act passed before A. Ducatel, notary public, in this city, on the thirtieth of April, 1866.

The secondly described property from Wm. C. Raymond, per act passed before the same notary on the fifth day of May, 1866.

The thirdly described from the New Orleans and Carrollton Railroad Company, per act passed before me, notary, on the twenty-ninth of June, 1866.

And the fourthly described from the same company, per act passed before the same notary on the fifteenth of January, 1867.

And by act passed before Gustave Le Gardeur, jr., a notary public, in this city, on the twenty first of August, 1867, the said Alexander Bonneval, Joseph Hernandez, and George Binder acquired the interest of said Thomas P. May and Augustus C. Graham in said real estate, being two thirds thereof, by purchase from the United States of America, the remaining third belonging to him, said Beauregard.

130 In consideration of the foregoing fusion and delivery of property, the New Orleans and Carrollton Railroad Company shall issue eight thousand shares of its stock, the shares to be of one hundred dollars each, and the parties of the first part shall receive four thousand shares, and the parties of the second part shall receive four thousand shares of said stock, which shares he, said Millaudon, binds his company to issue in order to deliver the same to the parties of the first and second part as hereinabove agreed. This reference approved.

In further consideration of the foregoing fusion and delivery of property, the New Orleans and Carrollton Railroad Company does hereby assume and bind itself to pay, and be responsible for, all the debts and liabilities of said Carrollton Railroad, and of said parties of the second part, so far as their liabilities for said road are concerned, by reason of all which said New Orleans and Carrollton Railroad Company
131 having by these presents consolidated their interest with that of the said parties of the second part of the said railroad company, as one corporate body becomes and is liable for all debts due by said company, and by said parties of the second part, except, however, the indebtedness of said Binder, Hernandez and Bonneval under their said act of purchase of the twenty-first of August, 1867, of which further mention is hereafter made.

And the said Binder for himself and said Hernandez, and said Bonneval for himself, do hereby bind themselves to pay and take up and deliver to the said New Orleans and Carrollton Railroad Company two several promissory notes dated the twentieth of August, 1867, made and subscribed by them, to the order of and endorsed by F. A. Ducros, L. E. Lamarie and John Dolhonde, payable at the office of the assistant treasurer of the United States in this city, one for one hundred
132 thousand dollars, payable in three months, and the other for eighty-eight thousand dollars, payable in six months, and given in part payment of the purchase price stipulated in said sale of the twenty-first of August, 1867, to which said parties hereby specially refer.

And as a special guarantee to said New Orleans and Carrollton Railroad Company for the payment of said notes by them, said Binder, Hernandez, and Bonneval, the said Binder for himself and said Hernandez, and said Bonneval for himself, and said Proctor for said Beauregard, do hereby agree to leave in possession of said New Orleans and Carrollton Railroad Company twenty-five hundred shares of the four thousand shares coming to them by reason of this present act of fusion and consolidation of interests, it being, however, agreed and understood that on the payment and delivery to said railroad company by said parties of the second part of the said note of one hundred thousand
133 dollars, said parties of the second part shall immediately be entitled to and receive one thousand shares of the twenty-five hundred shares so retained as security, and that on payment of said note of eighty eight thousand dollars and the delivery thereof to said company by said parties of the second part, they shall immediately be entitled to and shall receive the remaining fifteen hundred shares of stock.

The said Proctor also binds said Beauregard to deliver up to said railroad company all paid notes in the property presently delivered.

By reference to the annexed certificate of the recorder of mortgages in and for this city and parish, it appears that the property above described, and situate in this city, stands encumbered in the name of said parties of the second part—

1st. By the mortgage they granted in favor of the United States of America, per act passed before Gustave Le Gardeur, jr.,
134 notary public, on the twenty-first of August, 1867, to secure one hundred and eighty-eight thousand dollars, interests and costs.

2nd. By the mortgage they granted in favor of the New Orleans and Carrollton Railroad Company per act passed before me, notary, on the fifteenth of January, 1867, to secure seventeen thousand three hundred and thirty-three dollars thirty-three and on'-third cents, interest and costs.

3rd. The general mortgage in favor of Mrs. Marie Celine Avégno, wife of said Alexander Bonneval, resulting from their marriage contract, executed before H. Paul Caire, late notary public in this city, on the twenty-eighth of May, 1853, in and by which act, he, said Bonneval, acknowledges to have received and take charge towards his said wife of the sum of twelve thousand dollars.

4th. The general mortgage in favor of the same, resulting from an act of donation, passed before A. Ducatel, notary, on the fourteenth of
135 June, 1855, by which said Bonneval took charge towards his said wife of the sum of thirteen thousand three hundred and ten dollars and eight cents.

5th. And by the draining privilege.

And by reference to the annexed certificate of the recorder of the parish of Jefferson, it appears that the property above described, and situate in the parish of Jefferson, stand incumbered in the name of said parties of the second part—

1st. By the draining privilege.

2nd. The privilege in favor of H. F. Smith, for two hundred and twenty-five dollars for making plank-road in front of square number sixty-six on Apollo street.

3d. The privilege in favor of the same, in the same amount, for making plank-road in front of square number sixty-five on Apollo street.

4th. The privilege in favor of the Southern Paving Company for laying pavement in front of square number sixty-five, in the sum of three thousand five hundred and forty-eight dollars and sixty-one cents.

5th. The privilege in favor of the same company, for laying
136 pavement in front of square number sixty-six, in the sum of eighteen hundred and sixty-six dollars and sixty-six cents.

6th. The privilege in favor of J. Rooney, in the sum of three hundred dollars, for curbing in front of square number sixty-six.

7th. The privilege in favor of J. Rooney, in the same amount, for curbing in front of square number sixty-five.

8th. The privilege in favor of the city of Carrollton, for repairing seven hundred and ninety-nine feet of brick pavement on Levee street, in front of square eight, in Carrollton, in the sum of one hundred and three dollars and eighty-seven cents.

9th. The mortgage which, by an act passed before A. Ducatel, notary public, dated the thirtieth of April, 1866, Beauregard, May, and Graham granted in favor of S. A. Kohn, on square number sixty-six, to secure two notes amounting to five thousand three hundred and thirty-three dollars and thirty-three and one-third cents.

10th. The one which, by an act passed before the same notary
137 dated the fifth day of May, 1866, Beauregard, May, and Graham granted in favor of Wm. C. Raymond, on square number sixty-five, to secure two notes, amounting to eight thousand three hundred and thirty-three dollars and thirty-three and one-third cents.

11th. The privilege which might result from the registry of a lease made on the twenty-fourth of October, 1865, by the New Orleans and Carrollton Railroad Company to Peter Williams, of the triangle in Carrollton, and the buildings thereon, known as the "Carrollton Hotel."

12th. The mortgage which, by an act passed before me, notary, on the twenty-ninth of June, 1866, G. T. Beauregard granted in favor of the New Orleans and Carrollton Railroad Company on the property above thirdly described, to secure two notes, amounting to seventeen thousand three hundred and thirty-three dollars thirty-three and one-third cents.

13th. According to said certificate it would appear that there
138 exists a general mortgage, resulting from the registry of a bond signed by G. T. Beauregard and Thomas P. May, in favor of Mrs. Isadora L. Dowty, wife of A. B. Seelye, for the sum of sixteen thousand dollars, which general mortgage has been given by the recorder of the parish of Jefferson, through error, the said New Orleans and Carrollton Company not in any manner making itself responsible for the payment of said bond.

14th. The one which, by an act passed before G. Le Gardeur, jr., a notary public, on the twenty-first of August, 1867, A. Bonneval, Joseph Hernandez, and George Binder granted in favor of the United States on all the above-described property to secure the payment of the sum of one hundred and eighty eight thousand dollars.

And to these presents personally intervened, first, Mistress Rosema Daunoy, of the full age of majority, the wife of the above-named Joseph Hernandez, herein acting in the absence of her said husband by
139 virtue of the hereunto annexed authorization; and, second, Louis Emile Lemarie, of this city, herein acting as the attorney in fact of Mistress Celine Marie Avégno, wife of the above-named Alexander Bonneval, duly appointed per act of procuration (containing renunciation) passed before John G. Nicolay, United States consul in Paris, France, on the sixteenth of September, eighteen hundred and sixty-seven, hereto annexed for reference.

Which appearers, the said Mrs. Hernandez for herself and said Lemarie as attorney in fact of said Mrs. Avegno, declared, after having taken cognizance of the present act of fusion, which I, notary, carefully read and explained to them, that it is their intention not only to ratify the same but also to make renunciation, the said Mrs. Hernandez for herself and said Lemarié for his said constituent, to all the rights which they have or may have in the above-described property.

Whereupon I, the said notary, declared unto them that by the
140 laws of this State they possessed a general mortgage on all the property of the above-named Joseph Hernandez and Alexander Bonneval, and upon that of the community in case they should renounce thereto—

First. For the restitution of their dower and the reinvestment of dotal property brought by them in marriage.

Second. For the restitution of dotal property by them acquired during marriage by inheritence, donation, or otherwise.

Third. For indemnity against all debts contracted, or which they may hereafter contract, with their said husbands.

Fourth. For such of their paraphernal property and funds as may have been alienated by their said husbands, or of which they have had or may have the administration or enjoyment, or which they may othererwise have benefitted.

Fifth. For nuptial presents made to them by their said husbands or others.

That in making their intended renunciation the said Mrs. Hernandez for herself, and said Mrs. Bonneval through her said attorney
141 in fact, would deprive themselves irrevocably and forever of all rights of reclamation against the above property whether under mortgage, privilege, or otherwise. Whereupon the said Mrs. Hernandez and said attorney in fact declared that they nevertheless persisted in the intention they had announced to ratify the above delivery of real estate, and to dispossess themselves of all rights which they have or

may have thereon, whether by marriage contract, dower, donation, or otherwise.

And the said Mrs. Hernandez for herself, and said Lemarié as attorney in fact aforesaid, again declared that they do hereby renounce henceforth and forever all and singular their said rights, and transfer the same to the said New Orleans and Carrollton Railroad Company, its successors and assigns, to be had and held by them, and by them enjoyed in law and thereout, and they do hereby bind themselves and their
142 heirs to the said New Orleans and Carrollton Railroad Company, its successors and assigns, that they shall and will at all times acknowledge the validity of the present act of delivery of real estate as above set forth, and of this renunciation to all the rights they may have in the property thus delivered to the said New Orleans and Carrollton Railroad Company, and that they, said Mrs. Hernandez, for herself, and said Lemarié, as attorney in fact aforesaid, shall never seek to oppose or impair the force of this act of delivery of property, hereby renouncing the benefit of all laws, privileges, and customs of which they might avail themselves, or which may be in their favor in the premises.

And finally the hereinabove-named parties of the first and second part declared that the real estate, with the buildings thereon, presently delivered by this act of fusion, are valued at the sum of one hundred and eighty-nine thousand and seventy dollars and fifty-eight cents, wherefore the United States internal revenue stamps of one hun-
143 dred and eighty-nine dollars and fifty cents are hereto attached.

And thereupon personally came and appeared and intervened to this act Mistress Rose Elizabeth Canongel, of the full age of majority, wife of said George Binder, who, being herein duly authorized and assisted by her said husband, took cognizance of the foregoing act of sale, which I, notary, carefully read and explained to her, and having so done, she declared that it was her intention not only to ratify said sale, but to make renunciation of all rights she has, by mortgage or otherwise, on the said property, upon which I, notary, declared to her separately and apart from her said husband, and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all the property of her said husband, and upon that of the community in case she should renounce thereto—

First. for the restitution of her dower, and the reinvestment of dotal property brought by her in marriage.

144 Second. For the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise.

Third. For indemnity against all debts contracted, or which she may hereafter contract, with her said husband.

Fourth. For such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had or may have the administration or enjoyment, or of which he may otherwise have benefitted.

Fifth. For nuptial presents made to her by her said husband or others.

That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage, privilege, or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act of sale and to dispossess herself of all rights and liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise; and the said husband

being now again present before me, and authorizing his said
145 wife, she again declared that she does hereby formally renounce, henceforth and forever, all and singular her said rights, and transfer the same to the said New Orleans and Carrollton Railroad Company and assigns, to be had and held by them, and *them, and* by them enjoyed in law and thereout; and she hereby binds herself and her heirs to the said New Orleans and Carrollton Railroad Company and assigns, that she and they shall and will, at all times, acknowledge the validity of the present sale, and of the renunciation she now makes of all rights which she has or may have in and to the property herein and hereby sold, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans, the fifteenth day of October, eighteen hundred and sixty-seven, in the presence of Edward G. Gotts-
146 chalk and James Fahey, witnesses residing in this city, who have signed their names with the said appearers and me, notary, after reading thereof.

(Signed) B. L. MILLAUDON.
G. T. BEAUREGARD.
Per pro S. RICHARD PROCTOR.
R. E. BINDER.
ALEXANDER BONNEVAL.
ROSEMA HERNANDEZ.
GEO. BINDER.
Per pro JOS. HERNANDEZ.
GEO. BINDER.
L. E. LEMARIE.

(Signed) JAMES FAHEY.
E. G. GOTTSCHALK.

S. MAGNER, *Notary Public*

A true copy.
New Orleans, La., July 9th, 1869.

S. MAGNER,
Notary Public.

EXHIBIT M.

Transfer of A. C. Graham to the Fourth National Bank of the city of New York of his interest in the lease of the Carrollton Railroad.

Know all men by these presents, that Augustus C. Graham, of Flushing, in Queens County, State of New York, of the first part, for and in consideration of the sum of one dollar to me in hand paid by the
147 Fourth National Bank of the city of New York, of the second part, the receipt whereof is hereby acknowledged, have granted, bargain, sell, assign, transfer, and set over unto the said party of the second part, its successors and assigns, all the estate, right, title, and interest of, and in a certain indenture of lease made by the New Orleans and Carrollton Railroad Company to Gustave Toutant Beauregard, dated the 12th of April, 1866, and recorded in the conveyance office of the parish of Jefferson, in the State of Louisiana, in book I J, folio 312, on April 19th, 1866, to which I may be entitled by virtue of certain articles of copartnership made between said Gustave Toutant Beauregard and Thomas P. May and myself, bearing date the 18th of April, 1866, or otherwise, and also all my right and interest in my property and effects

of said partnership, and also all debts due to me from said partnership or any other members thereof.

148 In witness whereof I have hereunto set my hand and seal this 8th day of May, in the year 1867.

(Signed) AUGUSTUS C. GRAHAM.

Sealed, signed, and delivered in the presence of—
A. A. ALOORD.
MOSES B. MACLAY.
B. F. LEE, Jr.

UNITED STATES OF AMERICA,
State, County, and City of New York, ss:

I, Moses B. Maclay, residing in the city of New York, a commissioner in said State to take depositions, affidavits, acknowledgments of deeds, powers of attorney, etc., etc., to be used or recorded in the State of Louisiana, duly commissioned and qualified, do hereby certify and make known that on the day of the date hereof, before me personally appeared Augustus C. Graham, of the city of New York, known to me to be the person described in and who executed the annexed agreement, and executed the same in my presence and in the presence of *of* A. A. Aloord and B. F. Lee, jr., witnesses of lawful age, residing in the

149 said city, who have subscribed the *the* same with me. And the said Augustus C. Graham acknowledges to me that he executed the same as his act and deed for the purpose therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office this 8th day of May, 1867.

(Signed) MOSES B. MACLAY,
Louisiana Commission in City of New York.

Parish of Jefferson, the 15th of May, 1867.
(Signed) ERNEST COMMAGERE,
Recorder.

I, the undersigned, recorder in and for the parish of Jefferson, do hereby certify that the foregoing is a true and correct copy of the registry of an act registered on the 15th of May, 1867, in conveyance office, in book I J, folio 812.

In witness whereof I have hereunto set my hand and affixed the seal of my office on this 14th day of October, 1867.

[SEAL.] (Signed) ERNEST COMMAGERE,
Recorder.

[Five cents. Int. rev. stamp.]

EXHIBIT N.

150 *Assignment by T. P. May to United States of America.*

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came

and appeared Thomas P. May, of this city, who declared that, in consideration of the sums of money due by him to the United States of America, the exact amount of which is to be ascertained upon an adjustment of his account with said United States, he does, by these presents, in part payment of said indebtedness, transfer, assign, and
151 set over, with all legal warranties, unto to the said United States of America, represented herein by John J. Knox, special agent of said United States of America, and here present and accepting for the said United States, the property, whether real, personal, or mixed, hereinafter mentioned and referred to, viz:

Cash in the First National Bank of New Orleans, three hundred and fifteen thousand seven hundred and seventy-nine dollars	$315,779 00
The steamer "Virgin," valued at the sum of seventy-five thousand dollars	75,000 00
Three lots of ground situate at the corner of Canal and Marais streets, together with the buildings thereon, purchased by said May from Geo. Ruleff by act before James Graham, notary, on the 2d of August, 1865, which real estate, with the household furniture on the premises, is hereby valued at fifty thousand dollars	50,000 00
J. O. Nixon's promissory note, dated April 25th,
152 1867, made to his own order, for the sum of twenty five thousand dollars	25,000 00
Fourteen hundred and ten shares, of one hundred dollars each, in the capital stock of the First National Bank of New Orleans, valued at one hundred and forty-one thousand dollars	141,000 00
A certain plantation situate in the parish of St. Charles, in this State, known as the "Payne Plantation," the same being the property of said May, although the title hereto is in the name of A. C. Graham, as per his act of purchase of the same, passed before A. Mazureau, a notary in this city, on the 6th of February, 1866, said plantation being valued at forty-four thousand dollars.	44,000 00
The interest of said May in and to the Carrollton Railroad Company, and the property, stock and appurtenances thereto belonging, the value of which is
153 estimated at the sum of four hundred and eighty thousand dollars	480,000 00
The said interest of May in commission business in this city, which is valued at sixty-six thousand dollars	66,000 00
Total estimated value of the property so ceded and transferred, the sum of one million one hundred and ninety-six thousand seven hundred and seventy-nine dollars.	$1,196,779 00

And the said Thomas P. May hereby promises and binds himself, without unnecessary delay, to sign and execute all acts or other instruments of writing that may be requisite or necessary to give the United States of America or their assigns full, complete, and valid titles to the property herein transferred.

To have and to h ld the real and personal property aforesaid unto the United States of America, or their assigns, forever.

And the said May furthermore binds himself personally, and
154 as the agent and attorney in fact of the persons interested with

him in the property herein referred to and hereby transferred, not to alienate or encumber the same to the prejudice of these presents.

Thus done and passed in my office at New Orleans aforesaid in the presence of Samuel H. Torrey and James Graham, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) T. P. MAY.
JOHN J. KNOX.

SAMUEL H. TORREY.
JAMES GRAHAM.

ANDREW HERO, JR. *N. P.*

A true copy of the original (duly stamped) on file and of record in my office.

New Orleans, La., July 7th, 1869.

ANDREW HERO, JR.,
Notary Public.

EXHIBIT G.

Copy of note referred to in bill.

$40,000.] NEW ORLEANS, *Sept'r 14th*, 1866.

155 On demand I promise to pay the First National Bank of New Orleans, or order, forty thousand dollars for value received, with interest at the rate of per centum per annum from date until paid, having deposited with them as collateral security for the payment of the same.

G. T. BEAUREGARD, *Lessee.*
Per pro T. P. MAY.

(Endorsed:) F. J. Herron.

EXHIBIT O.

Copy of bill of exchange referred to in bill.

Exchange for $125,000.

NEW ORLEANS, *March* 19, 1867.

Forty-five days after sight of this first of exchange (second unpaid) pay to the order of myself one hundred and twenty-five thousand dollars, value received, and charge the same to account of—

Yours, truly,

T. P. MAY.

To A. C. GRAHAM, Esq.,
No 3 Bond Street, New York.

No. .

(Endorsed:) T. P. May.

Subpœna in chancery to the New Orleans and Carrollton Railroad Company. Issued August 4th, 1873.

156 UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon the New Orleans and Carroll-

ton Railroad Company, duly incorporated by the laws of, and domiciled in the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery filed against said company and others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said New Orleans and Carrollton Railroad Company, Gustave T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, G. W. Binder, Alexander Bonneval, and the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

157 Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1873; otherwise the bill may be taken pro confesso.

(Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received August 5th, '73, by the U. S. marshal, and on the 6th day of same month and year served a copy of within subpœna in chancery on the N. O. and Carrollton Railroad Company named herein by handing the same to G. T. Beauregard, the president of said company.

158 New Orleans, August 11th, 1873.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to G. T. Beauregard.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Gustave T. Beauregard, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said Gustave T. Beauregard, the New Orleans and Carrollton Railroad Company, Thomas P. May, Augustus C. Graham, Joseph Hernandez, G. W. Binder, Alexander Bonneval, and

159 the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1873; otherwise the bill may be taken pro confesso.

(Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received August 5th, 1873, by the U. S. marshal, and on the
160 sixth day of same month and year served a copy of within subpœna in chancery on Gustave T. Beauregard, named herein, by handing the same to him in person.

New Orleans, August 11th, 1873.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Thomas P. May.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Thomas P. May, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said Thomas P. May, the New Orleans and Carrollton
161 Railroad Company, Gustave T. Beauregard, Augustus C. Graham, Joseph Hernandez, G. W. Binder, Alexander Bonneval, and the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of September, 1873, otherwise the bill may be taken pro confesso.

(Signed) F. A. WOOLFLEY, *Clerk.*

162 *Marshal's return.*

Received August 5th, 1873, by the U. S. marshal, and on the 6th day of same month and year served a copy of within subpœna in chancery on Thomas P. May, named herein, by handing the same to him in person.

New Orleans, August 11th, 1873.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Augustus C. Graham.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Augustus C. Graham, a citizen of the State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery filed against him and others,
163 wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said Augustus C. Graham, the New Orleans and Carrollton Railroad Company, Gustave T. Beauregard, Thomas P. May, Joseph Hernandez, G. W. Binder, Alexander Bonneval, and the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of September, 1873, otherwise the bill may be taken pro confesso.

164 (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received August 5th, 1873, by the U. S. marshal, and after a diligent search and inquiry Augustus C. Graham, named herein, could not be found.

New Orleans, Sept. 1st, 1873.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Joseph Hernandez.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States, to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Joseph Hernandez, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery, filed against him and
165 others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said Joseph Hernandez, the New Orleans and Carrollton Railroad Company, Gustave T.

Beauregard, Thomas P. May, Augustus C. Graham, G. W. Binder, Alexander Bonneval, and the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of September, 1873, otherwise the bill may
166 be taken pro confesso.

(Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received August 5th, 1873, by the U. S. marshal, and on the 6th day of same month and year served a copy of within subpœna in chancery on Joseph Hernandez, named herein, by handing the same to him in person.

New Orleans, Aug. 11th, 1873.

(Signed) S. W. REED,
Dy U. S. Marshal.

Subpœna in chancery to G. W. Binder.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon G. W. Binder, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit
167 court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said G. W. Binder, the New Orleans, and Carrollton Railroad Company, Gustave T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander Bonneval, and the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court
168 on or before the first Monday of September, 1873, otherwise the bill may be taken pro confesso.

(Signed) F. A. WOOLFLEY,
Clerk.

Marshal's return.

Received August 5th, '73, and on the 18th day of August, 1873, served a copy hereof on G. W. Binder, named herein, by handing the same to Cora Canouge, a person over 14 years of age, his sister-in-law, at the domicile of said Binder, No. 293 Burgundy street, in this city; the said Binder being absent in Europe at the time, and the said Cora Canouge being a resident of said domicile of Binder.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Alexander Bonneval.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

169 You are hereby commanded to summon Alexander Bonneval, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said Alexander Bonneval, the New Orleans and Carrollton Railroad Company, Gustave T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, G. W. Binder, and the Fourth National Bank of New York are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of August, in the year of our Lord one thousand eight hundred & seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

170 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of September, 1873, otherwise the bill may be taken proconfesso.

(Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received August 5th, 1873, by the U. S. marshal, and on the 26th of August, 1873, served a copy hereof on Alexander Bonneval by handing the same to him in person in this city.

New Orleans, August 26th, 1873.

(Signed) S. W. REED,
D'y U. C. Marshal.

Subpœna in chancery to the Fourth National Bank of New York.—Issued August 4th, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon the Fourth National Bank

of New York, an association duly incorporated under an act
171 of Congress, and located in the city and State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1873, then and there to answer a bill in chancery, filed against it and others, wherein Charles Case, receiver of the First National Bank of New Orleans, is complainant, and said Fourth National Bank of New York, the New Orleans and Carrollton Railroad Company, Gustave T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander Bonneval, and G. W. Binder are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States of America, this 4th day of
172 August, in the year of our Lord one thousand eight hundred and seventy-three, and the 98th year of American Independence.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1873, otherwise the bill may be taken pro confesso.

(Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received August 5th, '73, by the U. S. marshal, and after a diligent search and inquiry the 4th National Bank of New York named herein could not be found.

New Orleans, Sept. 1st, 1873.

(Signed) S. W. REED,
D'y U. S. Marshal.

Entry at September rules, 1873.—*Extract from chancery order-book.*—*Monday, September 1st*, 1873.

CHAS. CASE, RECEIVER, 1ST NATIONAL BANK OF N. O.,
vs.
THE NEW ORLEANS & CARROLTON R. R. CO. & others. } No. 7036.

The New Orleans & Carrollton Railroad Company, G. T. Beauregard, A. Bonneval, Geo. W. Binder, and Joseph Hernandez, defendants herein, have entered their appearance to complainants' bill of complaint.

Plea of G. T. Beauregard.—Filed October 30th, 1873.

U. S. circuit court.

CHAS. CASE, RECEIVER OF THE FIRST NATIONAL Bank of New Orleans,
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD Company et als. } No.

The plea of Gustave T. Beauregard, one of the defendants, to the bill of complaint of Chas. Case, receiver of the First National Bank of New Orleans.

This defendant, Gustave T. Beauregard, by protestations, not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein set forth, does plead in bar to the said bill, and
174 for cause of pleas saith:

That on the 4th June, 1870, said complainant filed his amended bill of complaint in this court against this defendant, against T. P. May, A. C. Graham, A. Bonneval, G. Binder, J. Hernandez, The New Orleans and Carrollton Railroad Company, and the Fourth National Bank of New York, said Graham not being cited or appearing in said suit.

And said bill alleges that on the 18th of April, 1866, a contract of partnership was formed between this defendant, G. T. Beauregard, T. P. May, and A. C. Graham, for the business of conducting of the New Orleans and Carrollton Railroad Company under a lease of said road obtained by said partnership, in the name of this defendant, under which contract said business was conducted, and heavy outlays and expenses were made and incurred by said partnership, in addition to which said partnership acquired certain real estate.

Said bill further charged that said Graham was president of said bank from Nov., 1864, to 1866, and said May then became its president, and at all times exercised a leading influence in its administration; that
175 said partnership opened an account with said bank in the name of this defendant as lessee; that while said May was president of said bank, said account being largely overdrawn, he, said May, on or about the 14th Sept., 1866, drew a promissory note in the name of this defendant for forty thousand dollars, and caused said amount to be credited to said account; that said account being again largely overdrawn, said May, on or about the 19th March, 1867, drew a bill of exchange on said A. C. Graham, in New York, at forty-five days after sight, in favor of said First National Bank, for one hundred and twenty-five thousand dollars, which amount he caused to be credited to said account; that no steps were taken to collect said bill or note, said bill was not stamped or forwarded for presentation, acceptance, or payment, but the same remained in possession of said bank, were then in possession of complainant, and were annexed to his said bill.

And said bill charged that the amounts of said bill and note were taken from said bank by said May in violation of his duty as
176 an officer of said bank, and in fraud of its rights, and was used for the benefit of said partnership. Said bill charged that the said account of this defendant as lessee exhibited a balance of seventy-two thousand and eight $\frac{82}{100}$ dollars ($72,008$\frac{82}{100}$), due by said partnership to said bank, but the real indebtedness of said partnership to said bank for money obtained from said bank by it was two hundred and thirty-seven thousand and eight $\frac{82}{100}$ dollars ($237,008$\frac{82}{100}$), being the amount of said balance increased by said forty thousand dollars ($40,000) and one hundred and twenty-five thousand dollars, the amount of said note and bill of exchange, being the same alleged indebtedness claimed in this suit, which amount, two hundred and thirty-seven thousand and eight $\frac{82}{100}$ ($237,008$\frac{82}{100}$), obtained by said partnership from said bank, it was averred in said bill, was used by said partnership, and for its benefit, in purchasing the property acquired by said partnership, paying for said lease and carrying on the business of said partnership, and that said alleged indebtedness of said partnership of

two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars,
177 with interest thereon, was due and unpaid; that said partnership and each of the members thereof in solido were bound and liable for the same.

It was further in said bill that said May, Graham, and this defendant were insolvent at and before the dates of the conveyances and transfers hereinafter mentioned, and had ever since been and still were insolvent, so that a judgment at law against them and execution thereon would afford no relief to complainant. And the bill averred that said bank had a lien and privilege upon the property of said partnership for the payment of said alleged indebtedness.

Said bill alleged that by acts of dates the 14th and 16th May, 1867, said May made a transfer and conveyance of the interest of him, said May, and said Graham in said partnership, and of the property of said partnership, to the United States, in payment of said May's individual indebtedness to said United States, which conveyance, it was alleged, said May had no authority from said Graham to make, and if said May had such authority said bill alleged he could not legally make said
178 conveyance for his individual debt. Said bill alleged that subsequently, on the 27th August, 1867, by act before G. Le Gardeur, notary public, this defendant becoming a party thereto, the United States, acting through W. Bell, its agent, transferred said property acquired by it from said May to A. Bonneval, G. Binder and J. Hernandez, which act the bill averred was annulled, and a new conveyance of said property to said Bonneval, Binder and Hernandez was made by the United States, by act of date 31st October, 1867, executed on its behalf by the Solicitor of the Treasurer, and said bill denied the authority of said Bell and said Solicitor to make said conveyances for the United States, and averred said conveyances were made without the observance of legal formalities, which alleged want of authority and alleged absence of legal formalities it was alleged were known to the said Bonneval, Binder and Hernandez, the New Orleans and Carrollton Railroad Company, at the dates of the aforesaid transfers and conveyances of the said property to them. That on the 15th October, 1867, by an act by that date between this defendant, said Bonneval,
179 Binder, Hernandez, the New Orleans and Carrollton Railroad Company and this defendant, said property was acquired by the said New Orleans and Carrollton Railroad Company for the consideration of said company giving to said Bonneval, Binder, and this defendant four thousand shares of its capital stock.

And said bill further charged that at the dates of said acts and of said transfers the parties thereto knew of said alleged indebtedness of said partnership to said bank, of its being unpaid, of the alleged insolvency of said May, Graham and this defendant, and of its existence at the date of said transfer by said May, of the consideration of said transfer and conveyances by said May, and said bill charged and alleged that all of said conveyances were in fraud of said partnership and of its alleged rights, and were void so far as said partnership was concerned, and that said property was liable for said alleged indebtedness, and said bill further alleged that the said company by the stipulations in said act of date 15th Oct., 1867, had assumed and bound itself to pay said
180 alleged indebtedness. And said bill charged that the said pretended assumption was in part the alleged consideration of the acquisition of said property by said company.

Said bill further alleged that said Graham had made an assignment to the Fourth National Bank of his alleged interest in said partnership

for the purpose of indemnifying said bank against certain liabilities, and thereupon said bill prayed for a decree against the said company and against said T. P. May, A. C. Graham, and this defendant, condemning them in solido to pay to the said complainant the amount of said alleged indebtedness, two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars ($237,008\frac{89}{100}$), with interest, and annulling said acts of transfer and conveyance of said property and said act between the New Orleans and Carrollton Railroad Company, this defendant, A. Bonneval, Geo. Binder and Joseph Hernandez, of date the 15th Oct., 1867, and that the property conveyed and transferred by said acts be decreed *be decreed* to be liable for the payment of said alleged indebtedness to said First
181 National Bank, and that the marshal be ordered to seize and sell the same, and that the proceeds of sale be applied to pay said alleged indebtedness and the balance of said proceeds after said payment be disposed of as directed by law.

And said bill further prayed for an injunction, said prayer being omitted in the now bill, to restrain the defendants, A. Bonneval, Geo. Binder, J. Hernandez, and this defendant, from transferring the aforesaid shares of stock awarded them in said act of date 15th Oct., 1867, to which said bill this defendant filed an answer to the allegations thereof, and denying the alleged liability therein set forth, or, if any existed, denying defendant's liability therefor.

And to said bill the defendants, the New Orleans and Carrollton Railroad Company, A. Bonneval, Geo. Binder, and J. Hernandez, also filed answers to the allegations thereof, insisting that said transfers and conveyances were valid; that the said New Orleans and Carrollton Railroad Company had acquired a legal and valid title to said property, the subjects of said acts, and denying that said complainant, or the bank
182 of which he is the receiver, had or ever had a lien and privilege thereon, or that said property was bound or liable in any manner for said alleged indebtedness, or that said company was bound or liable to the complainant in any manner for said alleged indebtedness, or ever assumed or bound itself for the same, and denying all the allegations in said bill tending to charge said company or said property acquired by it with any liability whatever to the complainant. And said May and the other defendants in said suit filed answers to said bill.

To which answers the complainant filed a general replication, and thereupon testimony was produced by the complainant and the defendants in reference to the matters at issue and upon the merits of the cause; and after complainant had produced all his testimony in support of his bill, the cause came on to be heard on the merits, upon the bill, answers, and the testimony aforesaid, and after full argument upon the merits, and upon said bill, answers, testimony, and upon the merits of the cause, this honorable court, on the 14th June, 1871, rendered a
183 final decree, duly enrolled and signed on the 15th June, 1841, dismissing said bill, in the words and form following, to wit:

"For reasons orally assigned by the court, it is ordered, adjudged, and decreed that there be judgment for the defendants, dismissing complainant's bill, with costs."

Which decree is unappealed of, final, and res judicata in favor of these defendants and against said complainant.

And this defendant further shows that on the 10th July, 1871, said complainant instituted suit at law in this court for said alleged indebtedness of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ ($237,008\frac{89}{100}$), with interest, against T. P. May, A. C. Graham, and this defendant, in which suit this defendant filed his answer, denying said

alleged indebtedness, or, if any existed, denying this defendant's liability therefor, and denying all allegations tending to charge this defendant with any liability whatever to complainant, which suit was tried upon the merits and upon the testimony produced by the parties thereto, and resulted in a judgment of this court against the defendant for
184 seventy-nine thousand and two $\frac{60}{100}$ dollars, with interest and costs, being one-third of said alleged indebtedness, and against said T. P. May for like amount, interest, and costs, from which judgment this defendant prosecuted a writ of error to the Supreme Court of the United States, allowed on the 13th September, 1873, which writ and the record of said suit at law is now filed and pending in said the Supreme Court, and this defendant refers to said bill and answers in said suit, being No. 5931 of the docket of this court, and to said petition, judgment, and answers in said suit instituted at law, being No. 6488 of the docket, for fuller explanation and greater certainty.

All of which matters and things this defendants avers to be true and is ready to prove, as this honorable court shall direct.

And this defendant avers that the said bill now exhibited against this defendant by the said complainant is for the same alleged matters, to the same effect and for the same relief as the bill before exhibited by the said complainant, to which this defendant answered, and upon which said final decree was rendered, enrolled, and signed, and therefore
185 this defendant doth plead the said decree and the pendency of said suit at law, wherein said writ of error is now pending in bar of the whole of complainant's now bill, and humbly prays the judgment of this honorable court whether he shall be compelled to make any other or further answer thereto.

And this defendant prays to be herein dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) G. T. BEAUREGARD.
Do. FINNEY & MILLER,
Do. L. E. SIMONDS,
Solicitors for G. T. Beauregard.

Gustave T. Beauregard, being duly sworn, deposes and says that the foregoing plea filed by him is not interposed for delay and is true in point of fact.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed before me this 25th October, 1873.

(Signed) F. B. VINOT,
U. S. Comm'r.

Henry C. Miller, of the legal firm of Finney & Miller, solicitors
186 for defendant, hereby certifies that in his opinion the foregoing plea filed by the defendant Gustave T. Beauregard is well founded in point of law.

(Signed) HENRY C. MILLER.

We concur in the above certificate.

(Signed) L. E. SIMONDS,
Do. JNO. FINNEY,
Of Counsel.

Plea of defendants.—Filed October 30th, 1873.

U. S. circuit court.

CHARLES CASE, RECEIVER OF THE 1ST NATIONAL BANK OF NEW ORLEANS,
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD COMPANY et als. } No.

The joint and several plea of the New Orleans and Carrollton Railroad Company, a corporation duly established by law, Alexander Bonneval, Geo. Binder, and Joseph Hernandez, defendants, to the bill of complaint of Cha's Case, receiver of the First National Bank of New Orleans.

These defendants, The New Orleans and Carrollton Railroad Company, Alexander Bonneval, George Binder, and Joseph Hernandez, by
187 protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth, do plead in bar to the said bill and for cause of plea say:

That on the 4th June, 1870, said complainant filed his amended bill of complaint in this court against these defendants, T. P. May, A. C. Graham, and G. T. Beauregard, and the Fourth National Bank of New York, said Graham not being cited or appearing in said suit, and said bill alleged that on the 18th April, 1866, a contract of partnership was formed between said T. P. May, A. C. Graham, and G. T. Beauregard, for the business of conducting the New Orleans and Carrollton Railroad Company, under a lease of said road obtained by said partnership in the name of said G. T. Beauregard, under which contract said business was conducted and heavy outlays and expenses were made and incurred by said partnership, in addition to which said partnership acquired certain real estate.

Said bill further charged that said Graham was president of said bank from November, 1864, to 1866, and said May then became its
188 president, and at all times exercised a leading influence in its administration; that said partnership opened an account with said bank in the name of G. T. Beauregard, lessee; that while said May was president of said bank, said account being largely overdrawn, he, said May, on or about the 14th September, 1866, drew a promissory note in the name of G. T. Beauregard, lesse, for forty thousand dollars ($40,000), and caused said amount to be credited in said account; that said account being again largely overdrawn, said May, on or about the 19th March, 1867, drew a bill of exchange on said A. C. Graham in New York, at forty-five days after sight, in favor of said First National Bank, for one hundred and twenty-five thousand dollars ($125,000), which amount he caused to be credited to said account; that no steps were taken to collect said bill or note; said bill was not stamped or forwarded for presentation, acceptance or payment, but the same remained in possession of said bank, were then in possession of complainant, and were annexed to his said bill.

189 And said bill charged that the amount of said bill and note were taken from said bank by said May in violation of his duty as an officer of said bank, and in fraud of its rights, and was used for the benefit of said partnership.

Said bill charged that the said account of Beauregard, lessee, exhibited a balance of seventy-two thousand and eight $\frac{89}{100}$ dollars ($72,008.89) due by said partnership to said bank, but the real indebtedness of said partnership to said bank, for money obtained from said bank by it, was two hundred and thirty-seven thousand and eight $\frac{89}{100}$ ($237,008.89) dollars, being the amount of said balance increased by said forty thousand dollars ($40,000) and one hundred and twenty-five thousand dollars ($125,000), the amount of said note and bill of exchange, being the same alleged indebtedness claimed in this suit, which amount, two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars ($237,008.89) obtained by said partnership from said bank, it was averred in said bill, was used by said partnership and for its benefit in purchasing the property acquired by said partnership, paying for said lease
190 and in carrying on the business of said partnership, and that said alleged indebtedness of said partnership of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars ($237,008.89), with interest thereon, was due and unpaid; that said partnership and each of the members thereof in solido were bound and liable for the same.

It was was further alleged in said bill that said May, Graham, and Beauregard were insolvent at and before the dates of the conveyances and transfers hereinafter mentioned, and had ever since been and still were insolvent, so that judgment at law against them, and execution thereon, would afford no relief to complainant; and the bill averred that the said bank had a lien and privilege upon the property of said partnership for the payment of said alleged indebtedness.

Said bill further alleged that by acts of dates the 14th and 16th May, 1867, said May made a transfer and conveyance of the interest of him, said May, and said Graham, in said partnership, and of the property of said partnership, to the United States in payment of said May's individual indebtedness to said United States, which conveyance, it
191 was alleged, said May had no authority from Graham to make, and if said May had such authority said bill alleged he could not legally make said conveyance for his own individual indebtedness.

Said bill alleged that subsequently, on the 21st of August, 1867, by act before G. Le Gardeur, notary public, the said Beauregard becoming party thereto, the United States, acting through W. Bell, its agent, transferred and conveyed said property acquired by it from said May to A. Bonneval, G. Binder, and J. Hernandez, which act the bill averred was annulled and a new conveyance of said property to said Bonneval, Binder, and Hernandez was made by the United States, by act of date the 31st Oct., 1867, executed on its behalf by the Solicitor of the Treasury, and said bill denied the authority of said Bell and said Solicitor to make said conveyance for the United States, and averred said conveyances were made without the observance of legal formalities, which alleged want of authority and alleged absence of legal formalities, it was alleged, were known to said Bonneval, Binder, and Hernandez and the New Orleans and Carrollton Railroad Company, at the dates of the aforesaid transfer and conveyances of the said property to them;
192 that on the 15th Oct., 1867, by an act of that date between these defendants, said Bonneval, Binder, Hernandez, and the New Orleans and Carrollton Railroad Company and said Beauregard, said property was acquired by this defendant, the said New Orleans and Carrollton Railroad Company, for the consideration of said company's giving said Bonneval, Binder, and Hernandez four thousand shares of its capital stock.

And said bill further charged that at the dates of said acts and of

said transfers the parties thereto knew of said alleged indebtedness of said partnership to said bank, of its being unpaid, of the alleged insolvency of said May, Graham, and Beauregard, and of its existence at the dates of said transfer by said May, of the consideration of said transfer and conveyance by said May; and said bill charged and alleged that all of said conveyances were in fraud of said partnership and of its alleged rights, and were void so far as said partnership was concerned, and that said property was liable for said alleged indebtedness.

And said bill further alleged that the said company, by the
193 stipulations in said act of date 15th Oct., 1867, had assumed and bound itself to pay said alleged indebtedness; and said bill charged that the said pretended assumption was in part the alleged consideration of the acquisition of said property by said company.

Said bill further alleged that said Graham had made an assignment to the Fourth National Bank of his alleged interest in said partnership for the purpose of indemnifying the bank against certain liabilities.

And thereupon said bill prayed for a decree against the said company and against the said T. P. May, A. C. Graham and G. T. Beauregard, condemning them in solido to pay to the said complainant the amount of said alleged indebtedness, two hundred and thirty-seven thousand and eight $\frac{89}{100}$ ($237,00.89) dollars with interest, and annulling said acts of transfer and conveyance of said property and said act between the said New Orleans and Carrollton Railroad Company, A. Bonneval, George Binder, G. T. Beauregard, and Joseph Hernandez, of date the 15th Oct., 1867, and that the property conveyed and transferred by said act be decreed to be liable for the payment of said alleged indebtedness to said First National Bank, and that the
194 marshal be ordered to seize and sell the same, and that the proceeds of sale be applied to pay said alleged indebtedness, and that the balance of said proceeds after said payment be disposed of as directed by law. And said bill further prayed for an injunction, said prayer being omitted in the now bill, to restrain the defendants, A. Bonneval, G. Binder, J. Hernandez, and G. T. Beauregard, from transferring the aforesaid shares of stock awarded them in said act of date Oct. 15th, 1867.

To which said bill these defendants filed answers to the allegations thereof, insisting that said transfers and conveyances were valid, that the New Orleans and Carrollton Railroad Company had acquired a legal and valid title to said property, the subject of said acts, and denying that said complainant or the bank of which he is the receiver, had or ever had a lien and privilege thereon, or that said property was bound or liable in any manner for said alleged indebtedness or ever assumed or bound itself for the same, and denying all the allegations in said bill tending to charge said company or said property acquired
195 by it with any liability whatever to the complainant, filed a general replication, and thereupon testimony was produced by the complainant and these defendants in reference to the matters at issue and upon the merits of the cause, and after complainant had produced all of his testimony in support of his bill the cause came on to be heard on the merits upon the bill, answers and testimony aforesaid, and after full argument upon the merits and upon said bill, answers, testimony and the merits of the cause, this honorable court, on the 14th June, 1871, rendered a final decree, duly enrolled and signed on the 15th June, 1871, dismissing said bill, in the following words and figures, to wit:

"For reasons orally assigned by the court, it is ordered, adjudged,

and decreed that there be judgment for the defendants, dismissing complainant's bill with costs."

Which decree is unappealed of, final, and res judicata in favor of these defendants and against said complainant.

And these defendants refer to said bill and answers and decree in said suit No. 5931 of the docket of this court for fuller explanation and greater certainty.

196 All of which matters and things these defendants aver to be true and are ready to prove, as this honorable court shall direct.

And these defendants do aver that the said bill now exhibited against these defendants by the said complainant is for the same alleged matters, is to the same effect and for the same relief as the bill before exhibited by the said complainant, to which these defendants answered and upon which said final decree was rendered, enrolled and signed, and therefore these defendants do plead the said decree in bar of the complainant's now bill, and humbly pray the judgment of this honorable court whether they shall be compelled to make any other or further answer thereto.

And these defendants pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
do. J. HERNANDEZ.
do. G. W. BINDER.
do. ALEX. BONNEVAL.

(Signed) FINNEY & MILLER,
do. L. E. SIMONDS,
Solicitors for Def'd'ts, the New Orleans & Carrollton Railroad Company.

197 A. BONNEVAL,
GEORGE BINDER, &
JOSEPH HERNANDEZ.

Gustave T. Beauregard, president of the New Orleans and Carrollton Railroad Company, Alexander Bonneval, George Binder, and Joseph Hernandez, being duly sworn, depose and say that the foregoing plea filed by them is not interposed for delay, and is true in point of fact.

(Signed) G. T. BEAUREGARD.
do. G. W. BINDER.
do. J. HERNANDEZ.
do. ALEX. BONNEVAL.

Sworn to and subscribed before me this 24th day of October, 1873.
(Signed) F. B. VINOT,
U. S. Comm'r.

Henry C. Miller, of the legal firm of Finney & Miller, solicitors for defendants, does hereby certify that in his opinion the foregoing plea is well founded in point of law.

(Signed) HENRY C. MILLER.

We concur in the above certificate.

(Signed) L. E. SIMONDS,
do. JNO. FINNEY,
Of Counsel.

Entry at November rules, 1873.—*Extract from chancery order-book, Monday, November 3d*, 1873.

CHAS. CASE, RECEIVER OF THE 1ST NATIONAL Bank of N. O.,
vs.
198 THE N. O. & CARROLTON R. R. Co. & al. } 7036.

The defendants herein have, on the 30th day of October last past, filed their joint and several plea to the complainant's bill of complaint.

SAME
vs.
SAME.

G. T. Beauregard, one of the defendants herein, has, on the 30th October last past, filed his plea to the complainant's bill of complaint.

Agreement, time to argue pleas extended.—*Filed December 1st*, 1873.

U. S. circuit court, dist. of La. In equity.

CHARLES CASE, REC'R 1ST NATIONAL BANK of New Orleans,
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD Co. and others. } No. .

It is hereby agreed that the time for replying to or setting down for argument the pleas of the defendants on file shall be and is extended until the first Monday of January, 1874.

New Orleans, December 1st, 1873.

(Signed) L. E. SIMONDS,
do. FINNEY & MILLER,
Sol's for Def'd'ts.

199 *Replication to defendants' pleas.*—*Filed January 5th*, 1874.

United States circuit court, 5th circuit and district of Louisiana. In equity.

CHARLES CASE, RECEIVER OF THE 1ST NATIONAL Bank of New Orleans,
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD Company and others. } No. 7036.

The replication of Charles Case, receiver of the First National Bank of New Orleans, complainant, to the plea of the New Orleans and Carrollton Railroad Company, Alexander Bonneval, George Binder, and Joseph Hernandez, defendants, and to the pleas of Gustave T. Beauregard, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said pleas, for replication thereunto says that he will aver, maintain, and

prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said pleas of the said defendants
200 are uncertain, untrue, and insufficient to be replied unto by this repliant. Without this that any other matter or thing whatsoever in the said pleas contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) J. D. ROUSE,
Solicitor for Compl't.

Entry at January rules, 1874.—*Extract from chancery order-book, Monday, January 5th*, 1874.

CHAS. CASE, REC'R OF THE 1ST NATIONAL Bank of N. O., *vs.* NEW ORLEANS & CARROLLTON R. R. CO. & AL. } No. 7036.

The complainant has this day filed his replication to the defendants' pleas.

201 *Motion and order, case fixed.—Extract from the minutes, April term*, 1874.

NEW ORLEANS, *Monday, May 18th*, 1874.

Court met pursuant to adjournment.
Present, Hon. J. P. Bradley, Asso. Justice Sup. Court.
" " W. B. Woods, circuit judge.

CHAS. CASE, REC'R, *vs.* N. O. & CARROLLTON R. R. CO. & AL. } No. 7036.

On motion of J. D. Rouse, solicitor for complainant, it is ordered that this cause be set for hearing on Thursday, 21 inst., at 11 a. m., & that defendants be notified thereof.

Order to take testimony.—Extract from the minutes of May 21st, 1874.

CHAS. CASE, REC'R, *vs.* N. O. & CARROLLTON R. R. CO. & AL. } No. 7036.

This cause was called up.
Present, J. D. Rouse, W. W. King, Finney & Miller, J. A. Campbell.
And after hearing counsel it is ordered by the court that the parties take their evidence & proofs under the issue in this cause, before any U. S. commissioner, within ten days from this date.

202 *Notice to take testimony.—Issued May 28th*, 1874.

U. S. circuit court, district of Louisiana.

CHARLES CASE, RECEIVER,
vs.
NEW ORLEANS & CARROLLTON RAILROAD CO. et als. } No. 7036.

Messrs. L. E. SIMONDS & LEA, FINNEY & MILLER,
Solicitors for Defendants:

Please take notice that on Friday, the 29th day of May, 1874, at 6½ o'clock p. m., at the office of the clerk of the U. S. circuit court, the testimony of Charles Case, Richard De Gray, W. W. King, and J. Q. A. Fellows, and others, will be taken before me, on behalf of the complainant in the above-entitled cause, at which time and place you are requested to be present, and put interrogatories to said witnesses if you think fit.

New Orleans, May 28th, 1874.

(Signed) F. A. WOOLFLEY,
U. S. Commissioner.

Marshal's return.

Received, May 28, 1874, by the U. S. marshal, and on same day, month, and year served a copy of within notice on the within-named in the following manner: On L. E. Simonds, by leaving the same at his office, and on Finney & Miller, by handing the same to John Finney.

203 New Orleans, May 30th, 1874.

(Signed) S. W. REID,
D'y U. S. Marshal.

Testimony on behalf of the complainant.—Filed May 30th, 1874.

U. S. circuit court.

CHARLES CASE, RECEIVER, &c.,
vs.
N. O. & CARROLLTON R. R. CO. & ALS. } No. 7036.

Testimony taken May 29th, 1874, before F. A. Woolfley, U. S. commissioner. J. D. Rouse, esqr., for complainant. H. C. Miller, esqr., L. E. Simonds, esqr., for defendants.

Testimony of W. W. King.
" " Richard De Gray.
" " F. A. Woolfley.
" " Chas. Case.

Reported by C. W. Colton, phonographer, No. 16 Carondelet st.

W. W. KING, sworn on behalf of defendants in exception, says:

I am the counsel in the present case of Charles Case, receiver, against the Carrollton Railroad and others. I was also the counsel in the previous suit, representing the Fourth National Bank of New York,

204 of Charles Case, receiver, against G. T. Beauregard and others, No. 5931 of the docket of this court. I was present and partici-

pated in the argument of the case, and was also present when the decision was rendered by the court in the case. The decision was rendered by Judge Bradley. I was present when the decision was rendered by him, and heard that decision. Judge Bradley, after reading from a paper which he held in his hand a long opinion upon the merits of the case, which was in our favor, but said written opinion was never filed in the case, and I have not been able to find it anywhere, or to get hold of it. After reading from that paper he wound up with a few verbal remarks, in which he said that, according to his view of the case, we had not in our bill or evidence made out a case for equity jurisdiction; that we ought to have pursued the course which, in chancery proceedings, was known as a creditor's bill, in which we should have first, on the law side of the court, have prosecuted a suit and obtained a judgment, and upon that judgment have issued an execution upon which there
205 had been a return of nulla bona, before we had a right to proceed in chancery. He therefore dismissed the bill, because we had not made out a case for equity jurisdiction. I will state that that opinion of his was based upon long and elaborate arguments of counsel for the defendants to prove and maintain that position.

By Mr. ROUSE:

Q. You understood him, then, to dismiss the bill because of the technical defect that we had not alleged having first obtained a judgment at law and issuing an execution, and the return of no property found?

A. I distinctly so understood him, and that he thought before we could maintain an action in equity to set aside the transfers of property which we had sought to do in the action, that those were allegations indispensable in a bill to give an equity court jurisdiction in the case.

(Mr. Miller, for defendants, objected to this testimony to explain, enlarge, or affect in any manner the decree rendered in the case of Charles Case, receiver, against the New Orleans & Carrollton Railroad and others, No. 5931 of the docket of this court, and to the evidence
206 touching the reasons assigned for the remarks made by the judge who pronounced that decree, upon the ground that the decree was comprehensive and positive in the terms, must speak for itself, and cannot be contradicted, enlarged, or affected in any manner by such testimony, and on all further legal ground to be stated in the motion to suppress.)

Cross-examined by Mr. MILLER:

Q. Was the judge lengthy in his comments upon the case?

A. He read from a written opinion which I think must have been six or eight foolscap pages, and wound up with a very few verbal remarks at the end of it.

Q. Did he touch upon the merits of the case, generally?

A. He did, and decided them emphatically in our favor; every solitary question on the merits of the case, as to the legality of the transfer, and all that.

By Mr. ROUSE:

Q. When you say that he decided the merits of the case in our favor, you mean in favor of the complainant, do you not?

A. The complainant in the bill, and although I represented a
207 nominal defendant in the bill, my interest was identical with the plaintiff or complainant in the bill.

Q. You do not mean to say that he decided anything upon the merits,

but that he recapitulated the bill and the evidence, showing that it was maintained except for this technical defect?

A. He reviewed at very considerable length the case, so far as any merits of the case were involved, as to the right of a partner to transfer the property of a firm in payment of his individual debt, and in very decided terms he said or decided that such a thing was illegal and wrong; but he dismissed our bill because, in his opinion, we had not brought ourselves within the requirements of the chancery practice to make out a case for equity jurisdiction. I would like to add there that as to the precise language he used in dismissing the bill, I know the bill was dismissed, but whether he added any terms of qualification or not, I am unable to say.

(Signed) W. W. KING.

Sworn to & subscribed before me May 29, 1874.

(Signed) F. A. WOOLFLEY,
U. S. Commissioner.

N. B.—Word "appeal" erased & "bill" inserted.

(Signed) W. W. K.

208 RICHARD DE GRAY sworn and examined on behalf of defendants in exception.

By Mr. ROUSE:

Q. You are a practicing attorney in the Federal courts of New Orleans?

A. I am, sir.

Q. And have been such for many years?

A. Well, for nine years.

Q. Are you acquainted with Judge Bradley?

A. Yes, sir.

Q. Do you remember anything about a suit instituted by Chas. Case, receiver of the First National Bank, against G. T. Beauregard, Thomas P. May, A. C. Graham, The New Orleans and Carrollton Railroad Company, and others, No. 5931 of the docket of the circuit court of the United States for this district?

A. I don't remember the number of the case, but I do remember the case that was argued by yourself and Mr. King on one side, and by Mr. Miller and Judge Campbell on the other side, in which Charles Case and the Carrollton Railroad and the parties whom you have named were concerned.

Q. Was that case argued before Justice Bradley?

209 A. Yes, sir; it was argued before Justice Bradley about two years ago this summer; I remember that was the first summer of Judge Bradley in New Orleans; at any rate, it was at the time that Judge Bradley first came here to hold court.

Q. Were you present in court when he gave his decision in that case?

A. I was, sir.

Q. State, if you please, what you can remember of that decision.

A. Well, my recollection of the case is, and I think it is very vivid, that the bill was dismissed because there had not first been obtained a judgment at law against the parties and execution issued and returned nulla bona.

(Mr. Miller reserved the same objections stated to the testimony of Mr. W. W. King.)

(Signed) RICHARD DEGRAY.

No cross-examination.

Sworn to & subscribed before me May 29, 1874.
(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

F. A. WOOLFLEY testifies as follows, all formalities being waived:

By Mr. KING:

210 Q. Were you present when that decision was rendered in the case of Charles Case, receiver, against G. T. Beauregard and others?

A. I was.

Q. Do you recollect what Judge Bradley decided in that case?

A. My recollection of it is that Judge Bradley dismissed the bill, stating that the complainant should have brought his action at law before filing the bill in equity.

Q. Did he say anything about an execution being issued at law before?

A. Well, I don't recollect anything more.
(Signed) F. A. WOOLFLEY.

(Mr. Miller reserved the same objections stated to the testimony of W. King and Richard DeGray.)

CHARLES CASE, receiver of the First National Bank of New Orleans, and complainant herein, being first duly sworn, deposes as follows, and says:

I well recollect the opinion pronounced by his honor Judge Bradley, in the United States circuit court, fifth circuit, district of Louisiana, in the first chancery case brought by myself, as receiver, in said court against G. T. Beauregard and others, No. 5931 of the docket of said court. When I entered the court-room his honor was reading
211 from manuscript a statement of the allegations, &c., of the bill and answers, and also the points made by counsel in argument. This was all that he had written out & the residue of his opinion was oral. He stated that it had been urged in argument that the bill did not allege nor did it appear in proof that I had recovered a judgment at law and had execution issued and returned nulla bona against the defendants May, Beauregard, and Graham prior to filing my bill in chancery. (This point had been specially pressed by Judge Campbell, in his argument.) Judge Bradley continued as follows:

"It strikes me that this is a fatal objection to complainant's recovery. I have seen no case which would justify me in disregarding it. The amount due to complainant is not even made absolutely definite by a judgment, and I should have to ascertain it from the evidence. I may say, however, though perhaps it is hardly proper that I should do so (as the case turning upon the point mentioned the merits are not before me), that I should find little difficulty in settling the merits of this case
212 but for the objection above stated, but that seems to me insurmountable, and upon that ground the bill must be dismissed."

I give this statement so nearly in the words of Judge Bradley that I put it as a quotation. I have a distinct and clear recollection as to his saying that he should find little difficulty in disposing of the case upon the merits but for this one objection, and of his saying, in the same connection, that it was perhaps not proper that he should say this, as the merits were not under consideration. He said something about having

endeavored to get over this objection, but added that the further he examined the more strongly was he convinced that it was not prudent to depart from well established rules. This was the idea he expressed, though I am not certain that I give his exact words.

(Signed) CHAS. CASE.

Jurat & X-exam. waived.

(Signed) TINNEY & MILLER, &
L. E. SIMONDS,
For Def'd'ts.

Jurat and cross-examination waived, defendants' counsel objecting to the testimony in so far as it seeks to explain, enlarge, or affect in any manner the decree rendered in the case of Chas. Case, receiver,
213 against the N. O. & C. R. R. Co. & others, No. 5931, of the docket of this court, and to the testimony touching the reasons assigned or the remarks made by the judge in dismissing the complainant's bill, upon the ground that the plea is comprehensive and positive in its terms, must speak for itself, and cannot be contradicted, enlarged, or affected in any manner by such testimony, and all other legal objections to be stated in the motion to suppress.

Testimony on behalf of defendants.—Filed May 30th, 1874.

United States circuit court.

CHAS. CASE, RECEIVER, *vs.* N. O. & CARROLLTON R. R. CO. & OTHERS. } No. 7036.

Testimony taken May 30th, 1874, before F. A. Woolfley, U. S. commissioner. J. D. Rouse, esq'r, for complainant. H. C. Miller, esq'r, L. E. Simonds, esq'r, for defendants.

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" "	J. D. Rouse	217
" "	L. E. Simonds, recalled	220
214 Testimony of	H. C. Miller	220

Documentary evidence reported by C. W. Colton, phonographer, No. 16 Carondelet st.

Mr. Miller, for plaintiffs in exception, offers in evidence the decree in suit No. 5931 of this court, the entries upon the minutes of the court showing the trial and hearing of the case upon the merits, and the evidence offered, copies of the said entries upon the minutes to be furnished.

L. E. SIMONDS sworn and examined on behalf of exceptors.

By Mr. MILLER:

Q. You were present when this decree was rendered in the case of Charles Case, receiver, against the Carrollton Railroad Company and others?

A. I was present when the decree was rendered. I entered the court room while Judge Bradley was delivering his opinion. He had some manuscript in his hands. I am not sure whether he read any from the manuscript after I got there are not. He had it in his hand and

215 either had not finished reading it when I got there, or I knew immediately that he had been reading from it. He went on with some verbal remarks; the verbal remarks he made after I got there were simply to the point that there being no judgment at law against Graham and May (I don't know whether he named them or not), no judgment against those parties, the case was not made out, and therefore ordered that the bill be dismissed, but I am positive that there was no reservation of any right in its dismissal; it was a simple order, after giving his reasons, that the bill be dismissed.

Q. Did he comment upon the other grounds of controversy in the case?

A. My recollection is not so distinct that I could speak positively. I have a very strong impression (but I don't recollect the language that he used) that he spoke of the difficulty or the doubt as to having traced the money to particular property, the money drawn by Beauregard to invest in any particular piece of property.

Q. Is not your recollection distinct that he commented upon that feature of the bill?

216 A. I feel quite sure. I could not undertake to say what he said. I talked with nobody for some time after.

Q. Did he hold out the language in express terms that if the complainant had recovered a judgment at law it would be a case against these parties, or did he allude to that as one of the difficulties of the case?

A. I did not understand him as saying so, except indirectly in that way; the principal reason I heard him assign was that they had not obtained a judgment at law.

Q. He alluded to that as one of the difficulties in the case?

A. That was the main reason I heard him give, that they had not made out a case for the want of that judgment.

Q. Was it not at the conclusion of his verbal remarks that he commented upon the absence of this judgment at law?

A. I don't know whether it was the next thing preceding the dismissal, but it was the last comment that he made.

Q. How long did his reasons occupy in giving? I mean the time that you were there.

A. It must have been several minutes.

217 Q. Was he speaking at the time you came in, or reading?

A. I don't think he was reading; he had a manuscript in his hand, and I am not sure whether he was speaking or reading; I think he was speaking. I don't think he was reading, but he had it in his hand.

(Signed) L. E. SIMONDS.

Sworn to & subscribed before me May 30, '74.

(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

J. D. ROUSE, sworn for defendants in exception, says:

I was solicitor for the complainant in the suit of Charles Case, receiver of the First National Bank of New Orleans, against G. T. Beauregard, Thomas P. May, A. C. Graham, The New Orleans and Carrollton Railroad Company, and others, No. 5931 of the docket of the circuit court of the United States for the district of Louisiana. I was present in court when Mr. Justice Bradley decided the case. He commenced by reading from manuscript and recited all the allegations of the bill and

answer; and I think went some into the details of the evidence;
218 he stated the positions contended for by the counsel on either side; whether all of this was read from manuscript or whether a portion of this detail was stated orally, I am not now able to say. Until after he laid down his manuscript and continued orally I was under the impression, from the tenor of it, that he was about to decide the case in my favor. During the argument upon the trial of the cause, the counsel for the defendants specially pressed the point that the complainant had not first obtained a judgment at law against the partners, May, Beauregard, and Graham, had an execution issued upon said judgment and a return of no property found. Justice Bradley allowing to this said that he thought this difficulty insurmountable; that it struck him as being a fatal objection to the present proceedings. He said, "My examination has satisfied me that this objection must prevail; I have not seen a case which would enable me to overlook it," or words to that effect; and that, therefore, the bill must be dismissed. He then
219 stated in effect that although, perhaps, he ought not to say it, because the case was not before him upon its merits, owing to his dismissing it upon this technical objection, that if the complainant had obtained a judgment at law and had execution returned nulla bona upon such judgment against the partners, May, Graham, Beauregard, he should have no difficulty in granting the relief that the complainant asked; that it would be easy for him to take this preliminary step to entitle them to such relief.

I noted particularly the remark, "I have not seen a case which will warrant me in overlooking this objection." I remember it particularly because I had placed on Judge Bradley's table six different volumes, each containing a case which, in my opinion, expressly sanctioned our proceeding without such preliminary suit at law. They were so placed with a paper folded into the different leaves extending across them that they could not have been examined without my knowing it. I found upon going to the books that they had not been touched.

(Mr. Miller reserved the same objections stated to the testimony
220 of W. W. King, Mr. DeGray, and F. A. Woolfley.)

(Signed) J. D. ROUSE.

Sworn to & subscribed before me May 30, 1874.

(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

L. E. SIMONDS, recalled for defendants in exception, says:

I am quite positive that Judge Bradley did not use any such expression as that he dismissed the bill upon a technical objection. He did not say that he did not decide it on the merits; I am quite sure of that; I am quite sure that he did not use the word "technical."

(Signed) L. E. SIMONDS.

Sworn to & subscribed before me May 30, 1874.

(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

HENRY C. MILLER, sworn for exceptors, says:

The case of Charles Case, receiver, No. 5931, against the New Orleans and Carrollton Railroad Company and others, or Beauregard and
21 others, was heard upon the bill, answer, and replication. Testimony was offered both by complainant and by defendants, in

reference to all the matters at issue in the pleadings. All the grounds of defense presented by the answer and all the grounds of action presented by the bill were the subject of testimony upon both sides and elaborate argument or discussion in court, and the case went to the court for judgment. All of the evidence elicited upon all the points in the controversy, and the argument, which embraced all the points in controversy, went to the court.

The defendants pressed with great earnestness upon the court that the evidence had utterly failed to make out any lien upon the property in the possession of the Carrollton Railroad Company; that they had no privilege upon that property; that there was an absence of any legal or equitable claim on the part of the complainants against the defendants, the New Orleans and Carrollton Railroad Company. It was also pressed in argument that it was indispensable besides that
222 the complainants should have recovered a judgment at law and have exhausted legal remedies before bringing a suit of this character, but that ground of defense was pressed in common with all the others.

(Signed) HENRY C. MILLER.

Sworn to & subscribed before me May 30, 1874.

(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

Complainants' counsel object to the foregoing testimony of Mr. Miller, because it undertakes to detail what is a matter of record in this court and must be established by the record.

Mr. Miller offers in evidence the first bill filed in the suit No. 5931, the demurrer to said bill, and the decree of the court sustaining that demurrer and giving complainants leave to amend their bill.

Mr. Rouse objected on the ground that all the proceedings were under the amended bill.

Order case fixed, &c.—Extract from the minutes of June 3rd, 1874.

223 CHA'S CASE, REC'R, &C., *vs.* N. O. & C. R. R. CO. & AL. } No. 7036.

On motion of J. D. Rouse, solicitor for complainant, suggesting that the time for taking testimony herein have expired, publication of testimony is ordered and the case is assigned for hearing Wednesday next, June 10th, the defendants to be notified thereof.

Continuance.—Extract from the minutes, June 10th, 1874.

CHA'S CASE, REC'R, &C., *vs.* N. O. & CARR. R. R. CO. } No. 7036.

For want of time this cause is passed over.

Supplemental bill substituting F. F. Case complainant.—Filed January 28th, 1875.

U. S. circuit court, dist. of La. In equity.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD COMPANY et als.
No. 7036.

224 To the honorable the judges of the said court:

This supplemental bill of complaint exhibited by Frank F. Case, a citizen of the State of Louisiana, residing in the city of New Orleans, against the New Orleans and Carrollton Railroad Company and T. P. May, G. T. Beauregard, A. C. Graham, G. W. Binder, Joseph Hernandez, Alexander Bonneval, and the Fourth National Bank of New York, respectfully showeth:

That heretofore, to wit, on or about the 2d day of August, A. D. 1873, Cha's Case, then being receiver of the First National Bank of New Orleans, exhibited against said defendants and filed in said court his original bill of complaint, praying as follows, to wit:

"Your orator therefore humbly prays that there be decreed by this hon. court to be due to your orator, receiver as aforesaid, by the said partnership of Beauregard, May, and Graham, the said sum of ($237,008$\frac{82}{100}$) two hundred and thirty-seven thousand and eight $\frac{82}{100}$ dollars, with five per cent. per annum interest from May 13th, 1867, until paid, and costs of suit; and by each of said partners one-third of said debt, and also that the said

225 New Orleans and Carrollton Railroad Company be condemned by the decree of this honorable court to pay to your orator the said sum of two hundred and thirty-seven thousand and eight & $\frac{82}{100}$ dollars, with interest as aforesaid, and all costs. And, further, that so far as your orator is concerned and the rights he represents, that all of the before-mentioned transfers and conveyances of the case of the said railroad, its franchises, &c., &c., and of all the property of said partnership of Beauregard, May, and Graham be declared null and void, and that the said property be declared subject to a privilege and lien in favor of your orator for the amount due by said partnership to said bank, to be decreed as aforesaid, and that the same be seized and sold under the order and direction of this honorable court to pay the said amount, to wit, The unexpired term of the said lease to Beauregard, with all the privileges and franchises thereunto belonging; the stock and rolling stock of said railroad; all the property ever purchased by the said firm of Beauregard, May, and Graham, or by the individual members thereof for the use or benefit of the said firm, together

226 with all the improvements and rights attached thereto, and all the other property described in the said acts of transfer and conveyance which belonged to the said firm of Beauregard, May, and Graham, or of which they acquired the use, which are now in possession or control of said railroad company under and by virtue of any of the said illegal transfers and conveyances; and for all other relief in the premises, &c., &c.," all of which will more fully appear by reference to said original bill of complaint now on file.

And now your orator further showeth unto your honors that the said defendants, G. T. Beauregard, T. P. May, Joseph Hernandez, Alexander Bonneval, George Binder, and the New Orleans and Carrollton Railroad

Company, having been duly served with process for the purpose, appeared and put in their answer and plea to the said original bill, whereto the said complainant replied, and testimony was taken and publication thereof ordered, and that said suit is still pending and undetermined.

227 Your orator further showeth that since the aforesaid proceedings were had the said Charles Case resigned his said office of receiver of the said First National Bank of New Orleans, to wit, on or about the day of July, 1874, and that your orator, on or about the 8th day of July, 1874, was duly and legally appointed receiver of the said bank as the successor of the said Charles Case, and, qualified as such, became and now is the receiver thereof in the full and lawful discharge of his duties.

Wherefore the said Frank F. Case prays that he may in his official character aforesaid be substituted for the said Charles Case, complainant, and that he may have the benefit of said suit and all the proceedings therein; and that the same may be prosecuted and carried on between him and the said defendants in like manner as between the parties to the original suit; and the same relief and decree against them as the said Charles Case might have had, the prayer of his said bill being hereby adopted; and such other and further relief as the nature of the case and equity and good conscience may require.

And he will ever pray, etc.

(Signed) J. D. ROUSE,
Sol'r for Compl't.

228 *Order.*

Let the within supplemental bill be filed, and let Frank F. Case be substituted for "Charles Case, receiver," as complainant in the within entitled cause and have the benefit of the proceedings therein, and the same relief and decree against the defendants as the said Charles Case might have had, as prayed for.

New Orleans, January 28th, 1875.

(Signed) W. B. WOODS, *Judge.*

Motion and order case fixed.—Extract from the minutes, November term, 1874.

NEW ORLEANS, *Saturday April 3rd*, 1875.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

CHAS. CASE, REC'R,
vs.
N. O. & CARROLLTON R. R. CO. & AL, } No. 7036.

On motion of J. D. Rouse, sol'r for complainant, it is ordered that this cause be assigned for hearing on the 10th day of April, 1875, at 11 a. m., and that defendants be notified.

229 *Motion to suppress testimony.—Filed April 10th, 1875.*

U. S. circuit court.

CHAS. CASE, RECEIVER OF THE FIRST NATIONAL BANK,
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD COMPANY et als. } No. .

The defendants, the New Orleans and Carrollton Railroad Company, G. T. Beauregard, Alexander Bonneval, Joseph Hernandez, and George Binder, by their solicitors, John A. Campbell, L. E. Simonds, and Finney & Miller, now move to suppress the testimony of the witnesses William W. King, J. D. Rouse, R. De Gray, and F. A. Woolfley, taken on behalf of the complainant on the defendants' plea herein, which said testimony relates to and professes to show the grounds of the decree rendered by this honorable court in the former suit of Charles Case, receiver, vs. G. T. Beauregard et als., No. 5931 of the docket, and the reasons assigned by the court for that decree, and is relied upon by the said complainant to show that said decree was not pronounced on the merits of the said suit.

And this motion to suppress said testimony is based upon the
230 grounds that said decree has been duly signed and enrolled, was pronounced after the hearing of the said suit upon the merits upon bill, answer, and replication, and upon full testimony offered and received by the court on behalf of the complainants and the defendants in reference to all of the issues presented by the pleadings in said suit and after full argument on both sides; that said testimony seeks to explain, contradict, and alter the effect of the said decree, which finally and unconditionally dismissed the complainant's bill in said former suit, and to change said decree into one dismissing said bill without prejudice; that said testimony is illegal, inadmissible, and not competent to explain, alter, contradict, or in any manner affect the force and effect of said decree, which must speak for itself; that the alleged reasons of the court which pronounced said decree form no part of the decree and cannot control or affect its legal effect; and meaning but the bill and answer alone can be resorted to for the purpose of showing the matters determined by said decree, and that said decree can only be modified
231 or changed by rehearing within the legal delay, appeal, or bill of review.

(Signed) FINNEY & MILLER.
(do) L. E. SIMONDS.

Continuance.—Extract from the minutes of April 10th, 1875.

CHAS. CASE, REC'R, F. F. CASE, SUBSTITUTED,
vs.
N. O. & CARR. R. R. CO. & AL. } No. 7036.

By consent of counsel this cause is for want of time continued till the 19th inst. at 11 a. m.

Motion and order to withdraw plea of G. T. Beauregard.—Extract from the minutes November term, 1875.

NEW ORLEANS, *Saturday, February 26th*, 1876.

Court met persuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.
" E. C. Billings, district "

CHAS. CASE, REC'R,
vs.
N. O. & C. R. R. Co. & AL. } No. 7036.

On motion of G. T. Beauregard, through his solicitors, A. & W. Voorhies, it is ordered that said defendant be authorized to withdraw his plea filed in the premises.

232 *Note of evidence offered on hearing of defendants' plea.—Filed March 7th*, 1876.

U. S. circuit court, district of Louisiana.

CHAS. CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS, F. F. CASE, substituted,
vs.
NEW ORLEANS & CARROLLTON RAILROAD COMPANY et al. } No. 7036.

Defendants offer in evidence the record of suit No. 5931 of the docket of this court. Complainant offers in evidence testimony of W. W. King (transcribed on page 203 of this transcript). Charles Case (page 210), R. DeGray (page 208), F. A. Woolfley (page 209), to which the defendants object.

Argued and the court reserves its decision.

Copy of the original opinion of Mr. Justice Bradley in case No. 5931, and offer to prove it is a copy of the original. Also offer the statement of his Honor Judge Woods relative to the same. His Honor Judge Woods stated that he had had the original opinion of Mr. Justice Bradley in case No. 5931. Finding it imperfect, he returned it to him, but before doing so Mr. Rouse obtained it and had a copy made. The opinion as perfected by Mr. Justice Bradley is published in Woods' Reports, vol. 1.

(Copy now produced is a copy of the original opinion of Mr. Justice Bradley, obtained from Judge Woods, and referred to in the statement of Judge Woods.)

The copy of the said opinion is admitted, subject to the defend-
233 ants' objection, to be stated in a motion to suppress.

Andrew J. Murphy, sworn and examined on behalf of complainant, proves making copy of opinion (page 639).

Defendants, in rebuttal, offer the testimony of L. E. Simonds, (page of this transcript), J. D. Rouse (page), and Henry C. Miller (page).

Evidence closed. Argued.

TRANSCRIPT OF RECORD OF SUIT NO. 5931, OF THE UNITED STATES CIRCUIT COURT, REFERRED TO IN NOTE OF EVIDENCE. OFFERED BY DEFENDANTS, MARCH 7TH 1876.

Circuit court of the United States, fifth circuit and district of Louisiana. In chancery.

CHARLES CASE, RECEIVER OF THE FIRST National Bank of New Orleans *vs.* G. T. BEAUREGARD & OTHERS. } No. 5931.

Bill of complaint.—Filed July 10th, 1869.

To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana, holding sessions at New Orleans. In chancery:

234 Humbly complaining unto this honorable court, your orator Charles Case, a citizen of the State of Indiana, and also receiver of the First National Bank of New Orleans, a company duly incorporated under the laws of the United States, and located in the city of New Orleans, having been duly appointed receiver as aforesaid, under the laws of the United States, and as such authorized to bring this suit before this honorable court against Gustave T. Beauregard, Thomas P. May, who are both citizens of the State of Louisiana, residing in this district, and Augustus C. Graham, who is a citizen of the State of New York, and also against Joseph Hernandez, and G. W. Binder, and Alex. Bonneval, who are also citizens of the State of Louisiana, residing in this district, and the New Orleans and Carrollton Railroad Company, a company duly incorporated by the laws of the State of Louisiana, and domiciliated and located in this district, and also against the Fourth National Bank of New York, a company duly incorporated under the laws of the United States and domiciliated and located in the city of New York, respectfully showeth:

235 That on or about the 12th day *day* of April, 1866, A. D., the said G. T. Beauregard leased from the said New Orleans and Carrollton Railroad Company the railroad belonging to said company, together with real estate belonging to said company, the rolling stock thereof, the movable property of the said company, and all the rights privileges and franchises of the said company for and during the term of twenty-five years, in the manner and form more fully set forth in the Exhibit A, which is a copy of the said lease, and which is hereto annexed as part of this bill. (Transcribed on page 30 of this transcript.)

That although the said lease was made in the name of said Beauregard, it was so made with the view of a future partnership for the carrying on of the said business. That on or about the 18th day of April, 1866, the said Beauregard entered into a contract with the said T. P. May and the said A. C. Graham, such as is more fully set forth in the annexed copy of the said contract, hereto annexed as part of this bill and marked Exhibit B. (Page 41 of this transcript.)

Your orator alleges that under the said contract of copartnership the said parties conducted the business for which it was intended,

236 that the railroad was remodelled, refitted, and changed from steam-cars to horse-cars, requiring heavy outlays, and many other expenses were incurred by said partnership in their said business.

That in addition to the foregoing expenses the partnership, in order

the more successfully to carry on the said business, made large purchases of real estate, to wit:

1st. That purchased from William C. Raymond, by act before Amedée Ducatel, notary public in the parish of Orleans, on the fifth day of May, 1866, consisting of a square of ground bounded by Napoleon avenue, Berlin, Nayades, and Apollo streets, in the city of Jefferson, with all of the improvements thereon, as is more fully described by the annexed copy of said act marked Exhibit C. (Page 47 of this transcript.)

2d. That purchased from Samuel A. Kohn by act before the same notary, dated April 30th, 1866, consisting of a square of ground in the city of Jefferson, bounded by Nayades, Apollo, Milan, and Berlin streets, as is more fully set forth in the annexed copy of said act marked Exhibit D. (Page 54 of this transcript.)

3rd. That purchased from the said New Orleans & Carrollton
237 Railroad Company by act before Selim Magner, notary public in the parish of Orleans, on the 29th day of June, 1866, consisting of a triangle of ground in the town of Carrollton, in the parish of Jefferson, bounded by Levee street, Carrollton avenue, and First street, as is more fully described in the annexed act marked Exhibit E. (Page 60 of this transcript.)

The said property was purchased in the name of Beauregard alone, but was in fact purchased for the partnership, was paid for out of the partnership funds and belongs to the said partnership.

4th. That purchased from the New Orleans and Carrollton Railroad Company, known as the Horse Station, situated in the first district of New Orleans, in the square bounded by St. Charles, Felicity, Apollo, now called Carondelet street, and Polymnia streets, consisting of seven lots, as is more fully and particularly described in the annexed copy of the act of conveyance, passed before Selim Magner, notary public in New Orleans, on the 15th day of January, 1867, and which is made a part of this bill, and marked Exhibit F (page 67 of this transcript.)

The said purchase was made in the individual name of said
238 Beauregard, but was in fact purchased for the partnership, was paid for by the partnership, and belonged to the partnership.

5th. In addition to the property described as purchased by the partnership, the said firm by their lease from the said New Orleans & Carrollton Railroad Company were entitled to the use of a square of ground situated on the corner of Napoleon avenue and St. Charles street, in the parish of Jefferson, on which they made and erected extensive and valuable improvements which belonged to the said firm.

Your orator alleges that all or nearly all the money paid by the said Beauregard, Graham, and May for the purchase of the said lease for the improvements and alterations of the railroad, and for the equipment and furnishing of stock and other necessary material, and for the purchase of the real property above described, and making improvements thereon as well as on the property leased—in fact all or nearly all the money expended by the said partnership in the said business was obtained from the before-mentioned First National Bank of New
239 Orleans, and the said partnership were justly indebted to said bank therefor, none of which indebtedness has ever been paid.

That the said partnership opened an account with the said bank in the name of the said G. T. Beauregard, lessee.

That although the account stood in this manner upon the books of the bank, it was in reality the account of the said partnership, for which the partnership was justly and legally liable.

A copy of said account is hereto annexed as part of this bill, marked Exhibit G (page 259 of this transcript.)

That the balance which appears to be still due by said account is only seventy-two thousand and eight $\frac{89}{100}$ ($72,008$\frac{89}{100}$) dollars. But that is not the real amount due by said partnership to said bank. The true amount of the indebtedness of the said firm to the said bank being two hundred and thirty-seven thousand and eight $\frac{89}{100}$ ($237,008$\frac{89}{100}$) dollars, and interest, as hereinafter more fully and particularly set forth.

Your orator alleges that the First National Bank of New Or-
240 leans was incorporated, and was organized for business about the 28th day of November, 1864.

That the said T. P. May and the said A. C. Graham were leading and active founders of said bank.

That the said bank was organized by the election of B. F. Flanders as president, and A. C. Graham, cashier.

That the said T. P. May was one of the prominent and active directors of the bank from the time of its commencement.

That the said A. C. Graham was elected president of said bank July 12th, 1864, and continued to act as president of the said bank until the 12th day of July, 1866, at which time he absented himself, going to the city of New York.

Upon his leaving the said T. P. May was chosen president, to act during the absence of said Graham. The latter not returning again to New Orleans, the said May was elected president on or about the 6th day of October, 1866. He continued to act in that capacity until about the 8th day of April, 1867, at which time David Burke Forbes, the former vice-president of the bank, was elected president, and con-
241 tinued so to act until the bank was closed by proceedings by the Government of the United States.

That the said T. P. May was a director of the bank, and at all times during its existence exercised a leading influence and control over the bank and its administration.

That while the said T. P. May was acting as president of the bank, the aforesaid account of the partnership of Beauregard, Graham, and May, which stood on the books of the bank in the name of "G. T. Beauregard, lessee," being largely overdrawn in order to settle the overdraft nominally on the books of the bank, he, said May, drew on or about the 14th day of September, 1866, a promissory note in the name of the said Beauregard, lessee, payable to the First National Bank of New Orleans, on demand, for the sum of forty thousand dollars.

That the said May drew the said note in the name of said Beauregard, lessee, under a power of attorney from Beauregard which fully authorized him to do so, and to bind the said Beauregard thereby. That he caused the amount of said note to be credited to the said ac-
242 count of the said Beauregard, lessee, which was in fact, as herein previously stated, the account of the said partnership, and the amount thereof was used for the benefit of said partnership, as hereinbefore stated.

That no attempts were ever made to use or collect the said note by the said May or his successors in office. It remained in the possession of the bank until the final closing up thereof, and is now in the possession of your orator as receiver. The said note is hereto annexed as part of this bill.

Your orator further alleges that the said account of Beauregard, lessee, being again largely overdrawn, to wit, about one hundred and twenty-five thousand dollars ($125,000), the said T. P. May, on or about

the 19th day of March, 1867, drew an instrument, purporting to be a bill of exchange, in favor of the said First National Bank, payable at forty-five days after sight, on the said A. C. Graham in New York, for the sum of one hundred and twenty-five thousand dollars ($125,000), and caused the same amount to be placed to the credit of the said account of Beauregard, lessee.

That the said bill of exchange was never stamped, was never
243 forwarded for presentation, for acceptance or collection, but remained in the bank until it came to the possession of your orator as receiver thereof. The said bill of exchange is hereto annexed as part of this bill.

Your orator alleges that both of the preceding mentioned sums were taken from the bank by the said May in violation of his duty as an officer of the bank and in fraud of the rights of the bank.

That the money thus obtained was used for the benefit of the partnership existing between him and Beauregard and Graham in purchasing property, paying for the lease, and in carrying on the business of the partnership, and that all of the said partners are liable therefor in solido with the interest on the same from the date of the conversion of the said money to their use, to wit: on the amount of said note of forty thousand dollars from the said 14th day of September, 1866, and on the one hundred and twenty-five thousand dollars from the 19th day of March, 1867, and on the seventy-two thousand & eight $\frac{58}{100}$ dollars from the 25th day of April, 1867.

Your orator further avers that for the payment of the above
244 sums the said First National Bank had a privilege and lien upon all the property of the said partnership in preference to the individual creditors of any one of the said partners.

That the said property could not be legally conveyed away in payment of the individual debts of any one of the partners or appropriated to the use of any one of the partners so as to defeat the rights of the bank against said partnership property.

Your orator avers that John Jay Knox, an officer of the Government of the United States and special agent of the Treasury Department of said Government, duly authorized and commissioned therefor, took possession of the said First National Bank, its books and all the assets, and closed the same as an acting bank on or about the 13th day of May, 1867.

That he thus became aware, and the said government through him, as their agent, of the said indebtedness of the said partnership of Beauregard, Graham, and May to the said bank, and was also aware of the true origin of said indebtedness and of the fact that the business of the said partnership was mainly carried on by the money of the bank,
245 and that the funds of the bank invested in the property of the partnership had not been paid.

That, notwithstanding this knowledge, the said Government of the United States, through John Jay Knox, its agent, induced the said T. P. May to transfer his interest in the said partnership to said government, as appears by act 14th May, 1867, before A. Hero, notary public, annexed and marked Exhibit N (page 149 of this transcript.)

And further, on the 16th May, more formally to transfer and convey to the said government the interests owned by said T. P. May and the said A. C. Graham, in the said partnership and all its property, in payment of an alleged indebtedness due by said May, individually and personally, to the said government, as more fully appears from the annexed copy of the act passed before Andrew Hero, a notary public in New

Orleans, dated 16th day of May, 1867, which is made a part of this bill, and marked Exhibit H, (page 74 of this transcript.)

Your orator is informed, and so charges, that the pretended conveyance by said May of the interest of said Graham to the said gov-
246 ernment was made without any legal authority from said Graham to said May, and was, further, in violation of and a fraud upon his, Graham's, rights, and is consequently null and void.

Your orator further charges that even if May was authorized to transfer Graham's interest, which is denied, that still the conveyance made by him to pay his individual debts in both of the preceding acts was illegal, and was a fraud upon the rights of the First National Bank as a creditor of the partnership.

Your orator further alleges that the Government of the United States having, by the illegal means above set forth, gotten possession of the interests of the said May and Graham in the said partnership and property thereof did, by act passed before Gustave Le Gardeur, jr., notary public in New Orleans, on the 21st day of August, 1867 (the said G. T. Beauregard intervening and becoming a party thereto), transfer and convey the interests of May and Graham, acquired as aforesaid from T. P. May to the said Alexander Bonneval, G. W. Binder, and Joseph Hernandez. A copy of said act is hereunto annexed as part of this bill, marked Exhibit I, (page 82.)

247 That subsequently, to wit, on or about the 31st day of October, 1867, the said United States Government entered into an agreement with the said Bonneval, Binder, and Hernandez, by which the preceding act was annulled and a new conveyance made by the said government of the said property to the said parties, as more fully appears from annexed copies of two contracts dated October 31st, 1867, which are made a part of this bill, and marked Exhibits J & K, (pages 98 & 109, this transcript.)

Your orator further alleges that the said Bonneval and Binder and Hernandez and the said Beauregard entered into an agreement, on or about the 15th of October, 1867, with the said New Orleans and Carrollton Railroad Company, by which the said lease was surrendered to the said company, and all the property belonging to the said partnership of Beauregard, Graham, and May. This was done in consideration of the said company assuming all the debts and liabilities of the said partnership and growing out of the said lease, and also giving four thousand shares of the capital stock of said railroad company to said Beauregard, Bonneval, Binder, and Hernandez; one-third thereof to
248 the said Beauregard, and the remaining two-thirds thereof to the said Bonneval, Binder, and Hernandez; all of which more fully appears from the copy of an act passed before Selim Magner, a notary public in New Orleans, on the 15th day of October, 1867, which is hereunto annexed as part of this bill, and marked Exhibit L, (page 119 of this transcript.)

Now your orator alleges and so charges that, at the times at which all of the before-mentioned acts were passed and conveyances and transfers made, the said Bonneval and Binder and Hernandez, and the said Beauregard, and the said New Orleans and Carrollton Railroad Company, and the said Government of the United States, and the said T. P. May, all were well aware of the indebtedness of the said partnership of Beauregard, Graham and May, and also of the fact that the money of the said First National Bank had paid for the property conveyed, without any reimbursement having been made to the bank. Under these circumstances your orator charges that said conveyances and transfers

were illegal and fraudulent, and that all of the before-mentioned
249 conveyances and transfers of the property of said partnership or of any separate interest of the partners in the partnership, are null and void, and should be so decreed by this honorable court, and the said property be decreed to be liable for the debt due to the said First National Bank.

Your orator further alleges that on or about the 8th day of May, 1867, the said A. C. Graham transfer'ed and conveyed his interest in the said partnership of Beauregard, Graham, and May to the said Fourth National Bank of New York, as more fully appears from the copy of the act hereunto ann'ed, and marked Exhibit M (page 146 of this transcript).

That although the said instrument appears on its face to be an absolute conveyance of his, Graham's, interest, yet, in truth and in fact, it was only made for the purpose of indemnifying the said Fourth National Bank against certain liabilities which that bank had contracted on account of and for the benefit of the said First National Bank of New Orleans. Your orator cannot state the amount of the indebtedness of the said First National Bank to the Fourth National Bank, growing out of the payment of said liabilities by the said Fourth National
250 Bank, because the amount depends, or may depend, upon what has been or may be realized from other securities in *in* the hands of the said Fourth National Bank, and for which said Graham had given his personal guarantee to said Fourth National Bank.

Inasmuch as this conveyance was made for the benefit of and in the interest of the said First National Bank, your orator does not seek the avoidance thereof, but is desirous it should be carried out according to the real intentions of the parties making it.

In order to effect this object, it is necessary that the property should be sold and a settlement made with the said Fourth National Bank. The surplus remaining after settlement with the said Fourth National Bank should be decreed to be liable to the payment of the due by the said partnership of Beauregard, Graham, and May to the First National Bank.

Your orator alleges that the said sum of two hundred and thirty-seven thousand and eight $\frac{89}{100}$, with interest as aforesaid, is still
251 due and unpaid by the said Beauregard, Graham, and May, and that they neglect and refuse to pay the same.

That the said Beauregard and Bonneval, and Binder and Hernandez, and the New Orleans and Carrollton Railroad Company, refuse to permit the property of the said partnership, now illegally in their hands, to be applied to the payment of the debts of the said partnership; and, further, there can be no settlement with the said Fourth National Bank without a sale of the property, and that these acts and doings of the defendants in the premises, as hereinbefore set forth, are contrary to equity and good faith. In consideration whereof, and forasmuch as your orator is entirely remedyless in the premises, according to the strictness of the rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said defendants may be ordered to do what is just and proper in the premises, and the necessary decrees
252 therefor may be obtained, and that said G. T. Beauregard, A. C. Graham, and Thomas P. May be ordered in solido to pay your orator, as receiver of the said First National Bank of New Orleans as

aforesaid, the said sum of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ ($237,008.89) dollars, with interest, as hereinbefore set forth.

And that the various acts of sale, transfer, and conveyance of the partnership property of the said partnership of said Beauregard, Graham, and May, hereinbefore described (except the one by said Graham to the said Fourth National Bank), be declared null and void, to wit: the transfer made by said T. P. May to the United States on the 14th of May, 1867, before A. Hero, notary public.

Also, the act made before the same notary on the 16th of May, 1867, by the said T. P. May, transferring the interest of himself and A. C. Graham to the United States.

Also, the transfer and conveyance made by the United States to Bonneval, Binder, and Hernandez, by act passed before G. Le Gardeur, jr., a notary public, on the 21st day of August, 1867.

253 Also the two acts made on the 31st of October, 1867, between the United States and Bonneval, Binder and Hernandez.

Also the act between the New Orleans and Carrollton Railroad Company, and said G. T. Beauregard and Alexander Bonneval, and G. W. Binder and Joseph Hernandez, called the act of fusion, passed before Selim Magner, notary public, on the 15th day of October, 1867. That these acts be declared specially null and void as against the rights of your orator, and that the property therein conveyed and transferred be decreed to be liable to the payment of the amount due to the said First National Bank of New Orleans.

And further, that the marshal of this honorable court be ordered to seize and sell the same in due course of law. And that after the payment of the amount due to the Fourth National Bank of New York, out of the interest of the said A. C. Graham, the balance to be paid over to your orator as receiver, &c., to the amount of the claim of the First National Bank of New Orleans, the balance of the pro-

254 ceeds to be disposed of as the law may direct.

And that your orator may have such other and further relief in the premises, as the nature of the case requires, may it please this honorable court to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said T. P. May, G. T. Beauregard, and A. C. Graham, composing a partnership, individually and as members of the firm.

Also to the New Orleans and Carrollton Railroad Company, represented by the president thereof.

Also to Alexander Bonneval, G. W. Binder, and Joseph Hernandez.

Also to the Fourth National Bank of New York, represented by P. C. Calhoun, the president thereof, commanding them and each of them at a certain day to appear before this honorable court, and then and there to answer all and singular the premises, and to perform and abide such order and decree therein as to this honorable court shall seem meet.

255 And your orator shall ever pray, &c., &c.

Your orator further represents, that under the aforesaid act of fusion, between the said New Orleans and Carrollton Railroad Company, and G. T. Beauregard, & A. Bonneval, & G. W. Binder and Joseph Hernandez, the before mentioned four thousand shares of the capital stock of the said railroad company were given to the said Beauregard, Bonneval, Binder and Hernandez, in lieu of the property belonging to the said partnership of Beauregard, Graham and May, and that complainant fears that the said stock may be transferred by the said parties to third persons, greatly to the injury and embarrassment of the rights

of complainant as receiver, as aforesaid. He therefore prays that the said Beauregard and Bonneval, and Binder and Hernandez, be enjoined by order of this honorable court, and restrained from transferring, alienating, or encumbering the said stock or any part thereof, in any manner to the prejudice of the rights of the complainant; and that the said New Orleans and Carrollton Railroad Company be also
256 enjoined from permitting or recognizing in any manner, any such transfer of said stock to the prejudice of the complainant's rights as receiver as aforesaid, and for all other relief in the premises, &c., &c.

(Signed) J. D. ROUSE,
Sol. for Complainant.

U. S. circuit court, 5th circuit, dist. of La.

U. S. OF AMERICA,
State of Louisiana:

The above named Charles Case, being duly sworn, on his said oath says that all the matters and things stated in the foregoing bill of complaint, on information, he believes to be true, and that all the other several allegations therein contained are true in substance and in fact.

(Signed) CHAS. CASE.

Sworn and subscribed before me this 10th day of July, 1869.

(Signed) D. URBAN,
U. S. Comm'r.

Note.—Filed with bill July 10th, 1869.

257 $40,000.] NEW ORLEANS, *Sept.* 14, 1866.

On demand I promise to pay the First National Bank of New Orleans, or order, forty thousand dollars for value received, with interest at the rate of per centum per annum, from date until paid, having deposited with them as collateral security for the payment of the same,

(Signed) G. T. BEAUREGARD, *Lessee,*
Per pro T. P. MAY.

[20. Twenty dollars conveyance, United States inter. revenue. 20.]

(Endorsed:) F. J. Herron.

I do hereby waive protest on the within note.

(Signed) F. J. HERRON.

Draft.—Filed with bill, July 10th, 1869.

1.

Exchange for $125,000.

NEW ORLEANS, *Mar. 19th*, 1867.

Forty-five days after sight of this first of exchange (second unpaid),

pay to the order of myself one hundred and twenty-five thousand dollars, value received, and charge the same to account of—

Yours truly,
(Signed) T. P. MAY.

To A. C. GRAHAM, Esq.,
No. 3 Broad st., New York.

(Endorsed:) T. P. May.

258 2.

Exchange for $125,000.

NEW ORLEANS, *March 19th*, 1867.

Forty-five days after sight of this second of exchange (first unpaid), pay to the order of myself one hundred and twenty-five thousand dollars, value received, and charge the same to account of—

Yours truly,
(Signed) T. P. MAY.

To A. C. GRAHAM, Esq.,
No. 3 Broad st., New York.

No. .

(Endorsed:) T. P. May.

Exhibit A, filed with bill July 10th, 1869, is transcribed on page 30 of this transcript.

Exhibit B, filed with bill July 10th, 1869, is transcribed on page 41 of this transcript.

Exhibit C, filed with bill July 10th, 1869, is transcribed on page 47 of this transcript.

Exhibit D, filed with bill July 10th, 1869, is transcribed on page 54 of this transcript.

Exhibit E, filed with bill July 10th, 1869, is transcribed on page 60 of this transcript.

259 Exhibit F, filed with bill July 10th, 1869, is transcribed on page 67 of this transcript.

Exhibit G.—Filed with bill July 10th, 1869.

EXHIBIT G.

Individual ledger, A to M, No. 2, fol. 97.

DR. *G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.* CR

1866				1866.			
April 20	To check		$150 00	April 16	By cash		$20,000 00
" 20	"		100 00	" 17	"		495 65
" 21	"		50 00	" 18	"		428 95
" 23	"		100 00	" 19	"		412 85
" 24	"		5,921 30	" 20	"		385 55
" 25	"		208 33	" 21	"		392 35
" 26	"		212 99	" 23	"		1,161 80
" 26	"		967 50	" 24	"		435 90
" 28	"		150 72	" 25	"		414 30
" 28	"		886 02	" 26	"		1,026 55
" 30	"		8,640 00	" 27	"		388 10
May 1	"		2,716 65	" 28	"		378 15
" 2	"		460 00	" 30	"		1,325 05
" 3	"		1,278 61	May 1	"		444 85
" 3	"		208 33	" 2	"		455 25
" 4	"		4,032 85	" 3	"		591 30
" 4	"		1,481 50	" 4	"		20,000 00
" 5	"		920 25	" 4	"		438 50
" 7	"		1,251 65	" 5	"		539 55
" 8	"		150 00	" 7	"		1,187 45
" 10	"		32 94	" 8	"		502 60
" 11	"		97 65	" 9	"		425 75
" 12	"		682 90	" 10	"		383 30
" 14	"		522 77	" 11	"		303 70
May 15	To check		$124 62	May 12	By cash		$442 25
" 16	"		65 00	" 14	"		1,022 50
" 16	"		285 36	" 15	"		488 10
" 17	"		46 25	" 16	"		681 70
" 18	"		4,473 81	" 17	"		365 10
" 18	"		73 05	" 18	"		397 45
" 19	"		859 55	" 19	"		406 75
" 21	"		1,286 21	" 21	"		1,429 65
" 21	"		100 00	" 22	"		510 00
" 22	"		150 00	" 23	"		417 90
" 22	"		55 25	" 24	"		385 00
" 24	"		64 97	" 25	"		360 80
" 25	"		160 05	" 26	"		359 00
" 26	"		800 83	" 28	"		1,369 70
" 26	"		100 00	" 29	"		426 65
" 28	"		1,000 00	" 30	"		361 15
" 29	"		1,239 39	" 31	"		316 70
" 31	"		508 00	June 1	"		358 75
June 1	"		894 99	" 2	"		375 50
" 2	"		8,069 68	" 4	"		1,368 15
" 4	"		306 00	" 5	"		497 10
" 4	"		2,084 85	" 6	"		411 80
" 5	"		622 25	" 7	"		499 60
" 6	"		879 73	" 8	"		408 15
" 7	"		1,000 00	" 9	"		20,383 65
" 8	"		1,971 62	" 11	"		1,245 40
"	8	"	757 50	" 12	"		456 15
June	9	To check	2,501 13	June 13	By cash		411 30
"	11	"	5,076 62	" 14	"		384 15
" 11	"		200 00				
June 12	"		359 07				
			$67,330 74				$89,124 55

(Account carried to folio 96.)

260

Individual ledger A to M, No. 2, fol. 96.

1866.				1866.			
	Amount brought forward		$67,330 74		Amount brought forward		$89,124 55
June 15	To check		385 26	June 15	By cash		383 85
" 16	"		322 89	" 16	"		361 50
" 18	"		125 00	" 18	"		1,591 15
" 19	"		508 15	" 19	"		479 15
" 22	"		1,502 34	" 20	"		416 00
" 23	"		120 00	" 21	"		392 95
" 25	"		1,623 00	" 22	"		378 80
" 28	"		1,209 54	" 23	"		376 20
" 28	"		1,000 00	" 25	"		1,425 30
" 29	"		145 00	" 26	"		488 75
" 30	"		260 75	" 27	"		388 70
July 2	"		9,846 70	" 28	"		341 65
" 3	"		2,254 75	" 29	"		384 15
" 5	"		9,554 61	" 30	"		364 85
" 6	"		1,567 05	July 2	"		1,407 05
" 6	"		464 54	" 3	"		440 75
" 7	"		929 68	" 5	"		1,329 70
" 7	"		200 00	" 6	"		451 85
" 9	"		2,379 07	" 7	"		407 60
July 10	To check		1,064 56	July 9	By cash		998 20
" 10	"		408 75	" 10	"		20,443 80
" 12	"		1,200 00	" 11	"		497 40
" 13	"		1,108 67	" 12	"		387 90
" 13	"		90 00	" 13	"		361 70
" 14	"		2,498 43	" 14	"		389 85
" 16	"		480 99	" 16	"		1,399 15
" 17	"		208 33	" 17	"		459 60
" 18	"		272 00	" 18	"		416 30
" 20	"		307 50	" 20	"		672 50
" 20	"		100 34	" 21	"		319 00
" 21	"		968 75	" 23	"		1,189 35
" 21	"		215 50	" 24	"		422 20
" 23	"		631 00	" 25	"		367 45
" 26	"		100 00	" 26	"		369 80
" 26	"		50 00	" 27	"		338 15
" 27	"		1,000 00	" 28	"		317 00
" 28	"		1,500 00	" 30	"		994 25
" 30	"		846 59	" 31	"		430 05
Aug. 4	"		11,994 74	Aug. 1	"		347 90
" 4	"		1,309 91	" 2	"		385 20
" 6	"		1,007 06	" 3	"		278 85
" 7	"		1,909 26	" 4	"		541 20
" 8	"		905 45	" 6	"		1,418 35
" 9	"		140 50	" 7	"		357 05
" 10	"		217 15	" 8	"		513 80

261

Aug. 11	To check		1,132 20	Aug. 9	By cash		323 50
" 13	"		800 00	" 10	"		311 70
" 15	"		314 85	" 11	"		310 85
" 17	"		1,434 33	" 13	"		1,016 75
" 18	"		780 00	" 14	"		342 60
				" 15	"		294 20
				" 16	"		288 25
				" 17	"		271 65
				" 18	"		231 35
			$136,725 93				$138,941 75

Continued on folio 95.

Individual ledger A to M, fol. 95.

1866.				
	From folio 96			$136,725 93
Aug. 20	To check			500 00
" 21	"			100 00
" 22	"			200 00
" 23	"			100 00
" 24	"			144 00
" 24	"			1,233 92
" 27	"			716 77
" 29	"			212 30
" 31	"			179 45
Sept. 1	"			1,692 91
" 3	"			2,442 03
" 5	"			100 00
Sept. 6	To check		$153,232 05	8,884 74
" 7	"		155,536 71	2,304 66
" 8	"		156,183 06	646 35
" 10	"		158,783 06	2,600 00
" 11	"		158,883 06	100 00
" 13	"			200 00
" 14	"			1,513 65
" 14	"		160,646 71	50 00
" 15	"		180,914 89	20,268 18
" 17	"		181,587 56	672 67
" 18	"			3,052 02
" 18	"		184,832 08	192 50
" 19	"		184,926 58	94 50
	Balance			5,253 87
				$190,180 45

1866.				
	From folio 96			$138,941 75
Aug. 20.	By cash			893 95
" 21	"			346 10
" 22	"			257 65
" 22	"			279 65
" 24	"			259 70
" 25	"			236 95
" 27	"			1,009 30
" 28	"			300 85
" 29	"			269 85
" 30	"			252 15
" 13	"			239 05
Sept. 1	"			268 45
Sept. 3	By cash			1,088 25
" 5	"			917 40
" 6	"		145,907 05	346 00
" 7	"		146,204 30	297 25
" 8	"		146,455 95	251 65
" 10	"		147,118 60	662 65
" 11	"		147,511 45	392 85
" 12	"		147,794 90	283 45
" 13	"			251 30
" 14	"		148,306 00	259 80
" 15	"		188,569 70	40,263 70
" 17	"		189,546 05	976 35
" 18	"		189,885 05	339 00
" 19	"		190,180 45	295 40
				$190,180 45

Sept. 20	To check			378 00
" 21	"		430 56	52 56
" 22	"		1,791 16	1,360 60
" 24	"		2,050 76	259 60
" 26	"		2,344 54	293 78
" 27	"		2,424 74	80 20
" 29	"		4,239 39	1,809 65
	"		4,057 93	
Oct. 1	"		4,423 39	189 00

Sept. 19	By balance			$5,253 87
" 20	By cash			286 40
" 21	"		5,810 07	269 80
" 22	"		6,072 57	262 50
" 24	"		6,920 52	847 95
" 25	"		7,245 67	325 15
" 26	"		7,491 82	246 15
" 27	"		7,763 57	271 75
" 28	"		8,037 07	273 50

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Oct. 2	To check		7,337 46	2,914 07
" 3	"		14,164 33	6,826 87
" 4	"		15,115 03	956 70
" 5	"		15,407 91	292 88
" 6	"			1,652 42
" 6	"		17,251 58	191 25
" 8	"		18,799 55	1,548 17
" 10	"		19,065 52	265 77
" 11	"		19,363 52	300 00
" 13	"		20,687 22	1,321 70
" 15	"		20,960 72	273 50
" 16	"			91 25
" 16	"		22,232 97	1,181 00
				$22,231 97

Sept. 29	By cash		8,292 32	255 25
Oct. 1	"		9,287 42	995 10
" 2	"		9,723 82	436 40
" 3	"		10,317 27	593 45
" 4	"		10,703 37	386 10
" 5	"		11,113 17	409 80
" 6	"		11,396 17	283 00
			5,855 41	
" 8	"		12,453 22	1,057 05
" 9	"		12,758 22	305 00
" 10	"		13,060 77	302 55
" 11	"		13,329 67	268 90
" 12	"		13,609 92	280 25
" 13	"		13,862 27	252 35
" 15	"		14,859 12	996 85
" 16	"		15,169 97	310 85
" 17	"		15,476 42	306 45
				$15,476 42

Continued on folio 94.

Individual ledger A to M, No. 2, fol. 94.

1866.		From folio 95		$22,233 97
Oct.	18	To check		100 00
"	20	"	$23,048 72	715 75
"	22	"	24,873 97	1,827 25
"	23	"		525 00
Oct.	23	To check	$100 00	
"	24	"	25,968 37	467 40
		Balance		31,896 65
				$57,865 02

1866.		From folio 95		$15,476 42
Oct.	18	By cash		265 80
"	19	"	$15,982 37	240 15
"	20	"	16,216 92	234 55
"	22	"	17,093 12	876 20
Oct.	23	By cash		292 05
"	23	"	57,385 17	40.000 00
"	24	"	57,641 47	256 30
"	25	"	57,865 02	223 55
				$57,865 02

Oct.	26	To check		$86 40
"	27	"		342 40
"	27	"	$3,054 85	2,626 05
"	29	"	$11,007 52	$7,952 67
"	31	"	11,690 77	83 25
Nov.	1	"		861 66
"	1	"	12,563 23	610 80
"	2	"		4,195 43
"	2	"	22,071 11	5,312 45
"	3	"		2,448 16
"	3	"	25,019 27	500 00
"	5	"		2,571 47
"	5	"	29,590 74	2,000 00
"	6	"	29,973 74	383 00
"	7	"	30,182 07	208 33
"	8	"	30,456 01	273 94
"	9	"		100 00
"	9	"	30,650 51	94 50
"	10	"		631 40

Oct.	25	By balance		$31,896 65
"	26	By cash		215 25
"	27	"	32,311 65	199 75
Oct.	29	By cash	$32,999 55	$687 90
"	30	"	34,066 20	1,066 65
"	31	"	34,296 30	230 10
Nov.	1	"	34,509 10	212 80
"	2	"	34,808 75	299 65
"	3	"	35,039 00	230 25
"	5	"	36,184 80	1,145 80
"	6	"	36,633 80	449 00
"	7	"	36,854 45	220 65
"	8	"	37,208 70	354 25
"	9	"	37,416 00	207 30
"	10	"	37,667 25	251 25
"	12	"	38,351 70	684 45
"	13	"	38,676 60	324 90
"	14	"	38,923 05	246 45
"	15	"	39,079 70	156 65

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Nov.	10	To check		1,018 75
"	10	"	32,880 51	579 85
"	12	"	33,780 51	900 00
"	13	"	34,409 11	628 60
"	14	"		3,422 15
"	14	"	38,093 51	262 25
"	16	"	41,514 76	3,421 25
"	17	"	42,253 32	738 56
"	19	"		1,563 55
"	19	"	45,816 87	2,000 00
"	22	"		100 00
"	22	"	46,062 12	145 25
"	23	"	46,742 03	679 91
"	24	"	49,089 79	2,347 76
"	26	"	49,308 54	218 75
"	27	"		51 00
"	27	"	50,085 04	725 50
"	28	"	54,685 04	4,600 00
"	30	"		2,359 00
"	30	"	58,244 04	1,200 09
Dec.	1	"		1,877 84
"	3	"		1,413 75
"	4	"		8,103 28
"	4	"	69,840 91	202 00
				$69,840 91

Nov.	16	By cash	39,277 65	197 95
"	17	"	39,484 55	206 90
"	19	"	40,161 50	676 95
"	21	"	40,613 60	452 10
"	22	"	40,820 20	206 60
"	23	"	41,001 65	181 45
"	24	"	41,193 70	192 05
"	27	"	42,035 15	841 45
"	28	"	42,223 00	187 85
"	30	"	42,576 15	353 15
			15,687 89	
Dec.	1	"		167 40
"	3	"		816 55
"	4	"	43,955 95	395 85

Continued on folio 107 ..... $43,955 95

Individual ledger, A to M, fol. 107.

1866.					
		From folio 94			$69,840 91
Dec.	5	To check			285 30
"	6	"		$70,401 21	275 00
"	7	"			1,586 86
"	7	"		72,063 63	75 56
"	8	"			1,444 70
"	8	"		73,856 08	347 75
"	10	"		75,881 02	2,024 94
"	11	"		83,154 68	7,273 66
"	12	"			385 97
"	12	"		83,979 48	438 83
"	13	"			51 50
"	13	"		85,230 98	1,200 00
"	14	"			354 18
"	14	"		86,933 36	1,347 20
"	15	"		87,032 36	110 00
"	17	"			979 85
"	17	"		88,212 21	200 00
"	18	"			160 00
"	18	"		88,566 96	194 75
"	19	"		88,766 96	200 00
"	20	"			152 95
"	21	"		89,203 41	283 50
"	22	"			1,725 72
"	22	"		93,190 18	2,261 05
264					
Dec.	24	To check			268 07
"	24	"		93,769 75	311 50
"	28	"			2,839 66
"	28	"		97,774 25	1,164 84
"	31	"			338 00
"	31	"		98,169 25	57 00
					$98,169 25

1866.					
		From folio 94			$43,955 95
Dec.	5	By cash			3,998 29
"	6	"		48,310 74	356 50
"	8	"		49,952 84	1,642 10
"	10	"		51,018 54	1,065 70
"	11	"		51,428 54	410 00
"	12	"		51,745 04	316 50
"	13	"		51,897 04	152 00
"	14	"		52,111 04	214 00
"	15	"		52,446 04	335 00
"	17	"		53,003 04	557 00
"	18	"		53,145 04	142 00
"	19	"		54,685 29	1,540 25
"	20	"		54,797 29	112 00
"	21	"		56,574 29	1,777 00
"	22	"		56,791 29	217 00
"	24	"		57,622 79	831 50
"	26	"		58,099 79	477 00
"	27	"		58,320 79	221 00
"	28	"		61,788 89	3,468 10
"	29	"		61,873 89	85 00
"	31	"		62,449 89	576 00
		Balance to ledger No. 3.			$35,719 36
					$98,169 25

Individual ledger, A to L, No. 3, fol. 76.

1867.					
Jan.	1	To balance from ledger No. 2			$35,719 36
"	2	To 1 check			100 00
"	3	" 3 "			2,018 47
"	4	" 2 "			254 08
"	5	" 2 "			7,830 07
"	5	" 1 "		46,140 48	218 50
"	7	" 2 "			1,463 75
"	7	" 1 "		50,645 98	3,040 75
"	9	" 1 "			5,307 33
"	9	" 1 "		56,296 84	344 63
"	10	" 1 "			93 40
"	11	" 2 "			596 65
"	12	" 1 "			276 97
"	12	" 3 "		58,040 16	976 20
"	14	" 3 "			2,023 80
Jan.	14	To 1 check			217 00
"	16	" 1 "			8,666 66
"	16	" 1 "			100 00
"	18	" 1 "			100 00
"	19	" 4 "			2,577 34
"	19	" 1 "		71,924 96	200 00
"	21	" 1 "			100 00
"	21	" 1 "			126 60
"	22	" 1 "			479 60
"	23	" 1 "			500 00
"	24	" 1 "			103 60
"	24	" 1 "			189 00
"	25	" 1 "		74,521 51	1,101 95
"	26	" 4 "		75,149 01	627 50
"	31	" 2 "			2,817 06
"	31	" 1 "		78,044 17	78 10
Feb.	1	" 2 "			861 25
"	1	" 2 "			1,471 66
"	2	" 5 "		89,118 51	8,741 43
"	5	" 1 "			1,732 74
"	6	" 1 "			330 43
"	7	" 1 "			600 00
"	7	" 1 "			1,433 09
"	8	" 3 "		97,469 35	4,254 58
					$97,469 35

1867.					
Jan.	2	By cash			2,871 96
"	3	"			92 00
"	4	"			138 00
"	5	"		3,356 96	255 00
"	7	"		4,085 96	729 00
"	9	"		6,243 96	2,158 00
"	10	"		6,873 61	93 00
"	11	"			396 65
"	12	"			140 00
"	14	"			737 00
"	15	"			373 00
"	16	"			1,437 00
"	17	"			297 00
"	18	"			266 00
"	19	"		10,239 61	256 00
Jan.	21	By cash			596 00
"	22	"			238 00
"	23	"			1,813 00
"	24	"		13,125 61	239 00
"	26	"			357 25
"	28	"		13,987 86	505 00
"	29	"			191 00
"	30	"			1,244 00
"	31	"		15,567 86	145 00
Feb.	1	"		16,810 06	1,242 20
"	4	"			797 00
"	5	"			294 00
"	7	"			2,108 00
"	8	"		20,291 56	282 50
		By balance			77,171 79
					$97,469 35

Individual ledger, A to L, No. 3, fol. 76.—Continued.

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Feb.	8	"		balance			77,177 79	Feb.	11	By cash	1,937 00
"	9	"	1	check			135 00	"	12	"	335 00
"	11	"	6	"			12,528 17	"	13	"	192 00
"	11	"	3	"			4,156 00	"	14	"	236 00
"	12	"	1	"			89 00	"	15	"	298 00
"	13	"	2	"			780 15				
"	15	"	2	"			751 21				
"	15	"	1	"			108 64				
							$95,725 96				$2,998 00

Individual ledger, A to L, No. 3, fol. 77.

1867.							1867.				
				Amount brought forward		$95,725 96				Amount brought forward	2,998 00
Feb.	16	To	3	checks		1,872 94	Feb.	18	By cash		799 00
"	18	"	2	"		285 12	"	19	"		382 00
"	18	"	1	"	98,415 35	531 33	"	20	"		2,140 70
"	19	"	2	"		2,343 01	"	23	"	7,104 70	781 00
"	20	"	5	"		1,544 20	"	25	"		571 00
"	23	"	1	"		200 00	"	26	"		314 00
"	23	"	1	"	103,367 06	864 50	"	27	"		198 00
"	25	"	2	"		5,574 17	"	28	"	13,475 45	5,258 75
"	27	"	1	"		306 25	Mar.	1	"		2,597 55
"	28	"	1	"		208 33	"	2	"		176 00
"	28	"	1	"	112,528 85	3,073 04	"	4	"	18,837 81	2,588 81
Mar.	1	"	2	"		1,057 80	"	5	"		434 00
"	2	"	3	"		909 13	"	6	"		1,418 00
"	2	"	2	"		1,677 81	"	7	"	20,997 01	308 00
Mar.	4	To	5	checks		$6,036 15	Mar.	8	By cash	$21,294 84	$297 03
"	4	"	1	"	$123,319 74	1,110 00	"	9	"		214 00
"	5	"	1	"		7,497 95	"	11	"	22,738 84	1,230 00
"	6	"	1	"		300 00	"	12	"	23,127 34	388 50
"	7	"	1	"	131,321 29	203 60	"	13	"		1,748 66
"	8	"	1	"		370 00	"	14	"	25,242 00	366 00
"	8	"	2	"	131,985 32	294 03				25,377 00	
"	9	"	2	"		443 62	"	16	"	122,269 99	135 00
"	9	"	1	"		353 00	"	18	"		1,929 00
"	11	"	3	"	138,459 80	5,677 86	"	19	"		142 00
"	12	"	1	"		3,433 50	"	19	"	152,448 00	125,000 00
"	12	"	1	"	144,742 83	2,849 53	"	21	"		598 00
"	13	"	1	"	145,030 49	287 66	"	22	"		303 00
"	16	"	1	"		1,290 00	"	23	"		336 00
"	16	"	1	"	147,596 99	1,276 50	"	25	"		1,007 00
"	18	"	1	"		418 31	"	26	"	156,944 00	2,252 00
"	18	"	1	"		400 00	"	27	"	157,138 00	194 00
"	19	"	1	"	148,623 63	208 33	"	28	"		242 00
"	21	"	1	"		1,835 00	"	29	"		329 00
"	22	"	1	"		1,791 66	"	30	"		268 00
"	22	"	1	"		888 92	April	1	"		1,520 25
"	23	"	5	"		1,571 70	"	2	"		335 00
"	25	"	1	"	163,572 17	7,861 26	"	3	"		279 00
"	28	"	2	"	165,427 67	2,855 50	"	4	"		250 00
"	29	"	2	"	166,335 29	907 62			Balance		14,488 89
"	30	"	3	"	169,417 94	3,082 65					

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April	1	To	2	checks		1,648 00
"	1	"	1	"	171,365 94	300 00
"	2	"	1	"		971 66
"	3	"	1	"		89 05
"	3	"	1	"		225 00
"	5	"	4	"		1,674 49
"	5	"	1	"	174,850 24	524 10

Individual ledger, A to L, fol. 78.

1867.						1867.			
April 5	To balance				$14,488 99	April 6	By cash		$738 00
" 6	" 3 checks				780 30	" 8	"	$1,410 30	630 00
" 8	" 1 "		..	19,512 49	4,243 20	" 9	"	4,025 20	2,614 90
" 9	" 3 "				8,008 37	" 10	"		1,325 00
" 9	" 1 "		..	28,352 36	831 50	" 11	"		370 00
" 10	" 1 "				3,493 89	" 12	"		489 00
" 11	" 3 "				4,430 55	" 13	"	6,562 20	353 00
" 11	" 1 "				266 75	" 15	"		651 00
" 12	" 1 "				748 35	" 16	"	8,846 70	1,635 50
" 13	" 2 "		..	38,700 23	1,408 33	" 17	"	9,092 70	244 00
" 16	" 1 "				1,431 29	" 18	"		217 00
" 17	" 2 "				749 50	" 20	"	9,809 70	500 00
" 17	" 1 "		..	41,661 81	780 79	" 23	"		2,337 30
" 20	" 1 "				1,224 57	" 24	"	12,687 00	540 00
Apr. 20	To check		..	$43,522 23	$635 85	Apr. 25	By cash	$13,320 35	$633 35
" 22	" 3 "				1,093 25		To balance		72,008 89
" 23	" 3 "		..	45,390 48	775 00				
" 25	" 2 "				3,466 00				
" 26	" 1 "				424 15				
" 27	" 1 "		..	49,726 88	446 25				
" 29	" 4 "				6,741 99				
May 2	" 2 "		..	60,090 80	3,621 99				
" 3	" 2 "				916 66				
" 4	" 2 "		..	63,979 52	2,972 00				
" 6	" 3 "				7,249 80				
" 7	" 1 "				405 17				
" 8	" 2 "		..	76,134 49	4,500 00				
" 10	" 2 "		..	83,569 24	7,434 75				
" 11	" 1 "		..	85,329 24	1,760 00				
					$85,329 24				$85,329 24
May 11	To balance				$72,008 89				

267 Exhibited H, filed with bill July 10th, 1869, is trancribed on page 74 of this transcript.

Exhibit I, filed with bill July 10, 1869, is transcribed on page 82 of this transcript.

Exhibit J, filed with bill July 10, 1869, is transcribed on page 98 of this transcript.

Exhibit K, filed with bill July 10, 1869, is transcribed on page 109 of this transcript.

Exhibit L, filed with bill July 10, 1869, is transcribed on page 119 of this transcript.

Exhibit M, filed with bill July 10, 1869, is transcribed on page 146 of this transcript.

Exhibit N, filed with bill July 10, 1869, is transcribed on page 149 of this transcript.

268 *Subpœna in chancery to the New Orleans and Carrollton Railroad Company.—Issued July 10th, 1869.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon the New Orleans & Carrollton Railroad Company, represented by the president thereof, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against them and others wherein Charles Case, receiver of the First National Bank of New Orleans, & a citizen of the State of Indiana, is complainant and the said New Orleans & Carrollton Railroad Company and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the
269 Supreme Court of the United States of America this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received July 12, 1869, by the U. S. marshal, and G. T. Beauregard, president of said R. R. Company, was served at office of company, 118 Camp street, on the 13th day of July.

(Signed) S. W. REID,
D'y U. S. Marshal.

Supœna in chancery to Gustave T. Beauregard.—Issued July 10th, 1869.

United States of America.

270 The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Gustave T. Beauregard, individually & as member of the firm of G. T. Beauregard, T. P. May, & A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court, to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery, filed against him and others wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant and said Gustave T. Beauregard and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-
271 nine, and the 94th year of American Independence.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerks office of the circuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received July 12th, 1869, by the U. S. marshal, and G. T. Beaurgard was served, at office 118 Camp street, on the 13th, A. D. 1869.

(Signed) S. W. REID,
D'y U. S. Marshal.

Subpœna in chancery to T. P. May.—Issued July 10, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Thomas P. May, individually and as member of the firm of G. T. Beuregard, T. P. May and A.
272 C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against him and others wherein Charles Case, receiver of the First National Bank of New Orleans, and a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his
273 appearance in the clerk's office of the circuit court, on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received July 12, 1869, by the U. S. marshal, and returned not served.

The clerk of the hon. the circuit court is requested to issue an alias subpœna in chancery.

N. O., Sept. 6, 1869.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

Subpœna in chancery to Alexander Bonneval.—Issued July 10*th*, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Alexander Bonneval, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit

court to be holden on the first Monday of September, 1869, then
274 and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, & a citizen of the State of Indiana, is complainant, and said Alexander Bonneval and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the circuit court, on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

275 *Marshal's return.*

Received July 12, 1869, by the U. S. marshal, and p'lly on Alexander Bonneval on banquet corner of Common and Carandelet, on the 13 of July, 1869.

(Signed) S. W. REID,
D'y U. S. Marshal.

Subpœna in chancery to G. W. Binder.—Issued July 10th, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon G. W. Binder, a citizen of the State of Louisiana, to appear before the honorable judges of the fifth judicial circuit, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against him and others wherein Charles Case, receiver of the First National Bank of New Orleans, & a citizen of the State of Indiana, is com-
276 plainant, and said G. W. Binder and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed)
D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received Jul' 12, 1869, by the U. S. marshal, and G. W. Binder served on H. A. Lesassier, partner, who holds his power of attorney, 24½ Carondelet street, on the 14 of July, 1869.

277 (Signed) S. W. REID,
D'y U. S. Marshal.

Subpœna in chancery to Augustus C. Graham.—Issued July 10th, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Augustus C. Graham, individually and as member of the firm of G. T. Beauregard, T. P. May and A. C. Graham, & a citizen of the State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery, filed against him & others, wherein Charles Case, receiver of the First National Bank of New Orleans, and a citizen of the State of Indiana, is complainant, and said Augustus C. Graham and others are defendants.

278 Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

Marshal's return.

Received Jul' 12, 1869, by the U. S. marshal, and after diligent search was unable to find the aforesaid Augustus C. Graham, and was informed that he had left the State.

(Signed) S. W. REID,
D'y U. S. Marshal.

279 *Subpœna in chancery to Joseph Hernandez.—Issued July 10th, 1869*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Joseph Hernandez, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of September, 1869, then and

there to answer a bill in chancery, filed against him & others, wherein Charles Case, receiver of the First National Bank of New Orleans, & a citizen of the State of Indeana, is complainant, and said Joseph Hernandez and others are defendants.

Herein fail not and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of
280 July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y. Clk*,

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received, Jul' 12, 1869, by the U. S. marshal, and Joseph Hernandez served on the 13th of July, A. D. 1869, p'lly, at office No. 11 Carondelet street, N. O.

(Signed) S. W. REID,
D'y U. S. Marshal.

Subpœna in chancery to the Fourth National Bank of New York.—Issued July 10th, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

281 You are hereby commanded to summon the Fourth National Bank of New York, represented by P. C. Calhoun, the president thereof, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against them and others, wherein Charles Case, receiver of the First National Bank of New Orleans, & a citizen of the State of Indiana, is complainant, and said Fourth National Bank of New York and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

282 The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States

circuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received Jul' 12, 1869, by the U. S. marshal, and after diligent search and inquiry, the within-named defendant, the Fourth National Bank of New York, nor its agent nor attorney, could not be found.

N. O., Sept. 6th, 1869.

(Signed) F. A. WOOFLEY,
D'y U. S. Marshal.

Rule for injunction.—Entered and filed July 10th, 1869.

In U. S. circuit court, 5th circuit, and dist. of La. In chancery.

CHARLES CASE, RECEIVER OF THE FIRST National Bank of New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for Charles Case, complain-
283 ant in this suit, and upon producing to the court the bill of complaint, sworn to and filed herein, it is ordered that the defendants, Gustave T. Beauregard, Joseph Hernandez, G. W. Binder, Alexander Bonneval, and the New Orleans & Carrollton Railroad Company, do show cause, on Monday next, the 12th inst., at 11 o'clock a. m., why an injunction should not issue as prayed for in said bill of complaint, and that they severally be notified thereof.

Marshal's return.

Received Jul' 10, 1869, by the U. S. marshal, and served the papers directed to G. W. Binder, by leaving a copy with H. A. Lesassier, a partner, having power att'y for Binder, at 24½ Carondelet street, on the 10th of July, A. D. 1869, also one paper directed Alex. Bonneval in person at his office 22½ Carondelet street, July 10th, 1869; also one paper directed to Joseph Hernandez, p'lly, at No. 11 Carondelet street, on July 10th, 1869; also one paper for G. T. Beauregard, served on S. Richard Proc-
tor, treasurer of the N. O. & C. R. R. Co., at the domicil of the
284 said company at No. 70 Baronne street, at 9 o'clock & five minutes a. m. on the 12th of July, A. D. 1869; also one paper directed to the N. O. & Carollton Railroad Co., served on S. Rich'd Proctor, tre's. of said R. R. Co., at domicil of said company, at 17 Baronne street, at 9 o'clock & 5 minutes, on the 12th day of July, A. D. 1869, G. T. Beauregard, president, & Mr. Simons, the attorney of said company, being both out of the city.

(Signed) S. W. REID,
D'y U. S. Marshal.

Order injunction granted.—Extract from the minutes. April term, 1869.

NEW ORLEANS, *Monday, July* 12, 1869.

Court met persuant to adjournment.
Present, Hon. E. H. Durell, district judge.

CHAS. CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS.
vs.
G. T. BEAUREGARD ET AL.

The rule taken by complainant on 10th inst. was called for trial. J. D. Rouse for complainant; Semmes & Mott for defendants; when, 285 after hearing the pleadings, evidence, and argument of counsel, for reasons orally assigned, it is ordered by the court that an injunction issue restraining G. T. Beauregard and the officers of the New Orleans & Carrollton Railroad Company as prayed for in the bill, but that the injunction be denied as to the other defendants.

Injunction to Gustave T. Beauregard.—Issued July, 12, 1869.

Circuit court of the United States, fifth circuit and district of Louisiana.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS.
vs.
G. T. BEAUREGARD AND OTHERS. No. 5931.

The President of the United States to Gustave T. Beauregard, greeting:

Whereas it has been represented to us in our said circuit court on the part of Charles Case, receiver of the First National Bank of New Orleans, by his bill of complaint lately exhibited against you and others touching *and* things therein set forth:

Now, therefore, in consideration of the premises and of the 285 allegations in said bill contained, you, the said Gustave T. Beauregard, your attorneys, and each of you, are hereby commanded and strictly enjoined, under penalty of the law, that you absolutely refrain and desist from transferring, alienating, or encumbering in any manner, to the prejudice of the rights of the complainant, Charles Case, receiver of the First National Bank of New Orleans, the one-third of four thousand shares, or any part thereof, of the capital stock of the New Orleans & Carrollton Railroad Company, acquired by you from the said New Orleans and Carrollton Railroad Company under an act, as per agreement, dated on or about the 15th of October, 1867, until the further order of our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of July, in the year of our Lord, 1869.

[SEAL.] (Signed) D. UBBAN, *Clerk*,
By F. B. VINOT, *Dy Clk.*

Marshal's return.

Received July 13th, 1869, by the U. S. marshal, and served on
287 G. T. Beauregard at office at 118 Camp street on the 13th of July, 1869.

(Signed) S. W. REID,
D'y U. S. Marshal.

Injunction to the N. O. & Carrollton R. R. Co.—Issued July 12th, 1869.

Fifth circuit and district of Louisiana.

CHARLES CASE, RECEIVER OF THE FIRST National Bank of New Orleans, *vs.* G. T. BEAUREGARD AND OTHERS. } No. 5931.

The President of the United States, to the New Orleans and Carrollton Railroad Company, greeting:

Whereas it has been represented to us in our said circuit court on the part of Charles Case, receiver of the First National Bank of New Orleans, by his bill of complaint lately exhibited against you and others touching certain matters and things therein set forth:

Now therefore, in consideration of the premises and of the al-
288 legations in said bill contained, you, the said New Orleans and Carrollton Railroad Company, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from permitting or recognizing in any manner, to the prejudice of the said complainant, any transfer of one-third of 4,000 shares, or any part thereof, of the capital stock of the New Orleans and Carrollton Railroad Company acquired by Gustave T. Beauregard from the said company under an agreement as per act dated on or about the 15th of October, 1867, until the further order of our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of July, in the year of our Lord 1869.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received Jul. 13, 1869, by the U. S. marshal, and served on G. T. Beauregard, president of said R. R. Company, at office, 118 Camp
289 street, on the 13th, A. D. 1869.

(Signed) S. W. REID,
D'y U. S. Marshal.

Affidavit of G. T. Beauregard, Alex. Bonneval, and J. Hernandez.—Filed July 12th, 1869.

U. S. circuit court. In chancery.

CHAS. CASE, RECEIVER FIRST NATIONAL Bank of New Orleans, *vs.* G. T. BEAUREGARD & AL. } No 5931.

The undersigned, being duly sworn, say that they are credibly in-

formed, and believe and therefore aver, that the complainant, Charles Case, is and claims to be a citizen of the State of Louisiana; that he has given himself out to the world as a citizen of the State of Louisana and a lawyer practicing at the bar of New Orleans, and as such domiciled in the city of New Orleans, as appears by a petition filed by him in the Court of Claims at Washington, hereto annexed for reference, marked A.

(Signed) G. T. BEAUREGARD.
Do. J. HERNANDEZ.
Do. ALEX. BONNEVAL.

290 Sworn to and subscribed before me this 12 July, 1869.
(Signed) K. LOEW, *U. S. C.*

Document A, annexed to affidavit.—Filed July 12, 1869.

In the United States Court of Claims. To the December term, A. D. 1868.

THE BANK OF NEW ORLEANS
vs.
THE UNITED STATES.

To the honorable the judges of the United States Court of Claims:

Your petitioner, The Bank of New Orleans, a corporation chartered and existing under and by virtue of the laws of the State of Louisiana, respectfully represents, that on the 17th day of April, A. D. 1862, your petitioner became the owner by purchase of sixteen thousand and five hundred bales of cotton, situated in the counties of Perry, Dallas, Marengo, Wilcox, and Lowndes, in the State of Alabama. That said cotton was duly delivered to your petitioner by the party or parties
291 from whom it was purchased and continued thereafter to be in the possession of your petitioner.

Your petitioner further represents that in the course of military operations conducted during the late rebellion, some portion of said cotton so as aforesaid purchased by your petitioner was burned or otherwise destroyed.

Your petitioner further represents that there remained of said cotton in the possession of your petitioner in the month of April, A. D. 1865, about nine thousand bales, and that said nine thousand bales, situated in the counties aforesaid, were seized and taken possession of by the agents of the United States as abandoned property.

Your petitioner further represents that said cotton after such seizure was duly delivered to the Treasury agents acting for and in behalf of the United States, and that said cotton, after its delivery to such Treasury agents, was sold by such agents, and the proceeds thereof duly paid into the Treasury of the United States.

Your petitioner further represents that it is not accurately advised as to the actual amount of the proceeds resulting from the sale of
292 said cotton so as aforesaid paid into the Treasury of the United States, but upon information and belief your petitioner alleges the same to have been about the sum of two millions seven hundred thousand dollars; and that said sum was the net proceeds of said cotton; and that your petitioner is entitled to recover the same in this suit.

Your petitioner further represents that this suit is prosecuted under and in pursuance of an act of Congress of the United States approved

March 12th, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in the insurrectionary districts within the United States."

Your petitioner further represents that it has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

THE BANK OF NEW ORLEANS,
By C. CASE, *its Attorney.*

DISTRICT OF COLUMBIA,
City & County of Washington ss:

Charles Case, being duly sworn, on his oath states that he is one of the attorneys for the above-named claimant; that no assignment or
293 transfer of said claim or any part thereof or any interest therein has been made; that said claimant is entitled to the amount in said petition claimed from the United States after deducting all just credits and offsets; that he believes the facts stated in said petition to be true.

CHAS. CASE.

Sworn to and subscribed before me this 19th day of August, 1868.
EDM. F. BROWN,
Commissioner of the Court of Claims.

Address of claimant, New Orleans, La.
" " " solicitor, Case & Rouse, New Orleans, La.
John J. Weed, Washington, D. C.

Entry at September rules, 1869.—*Extract from chancery order book, Monday September* 6, 1869.

CHAS. CASE, REC'R 1ST NAT'L B'K OF N. O.,
vs.
G. T. BEAUREGARD & ALS. } 5931.

The defendant, the N. O. & Carrollton R. R. Co., G. T. Beauregard & the other defendants, by their solicitors, L. E. Simonds & He'z C. Miller, esqs., have this day entered their appearance to complainant's bill, except the 4th National Bank of N. Y., Thos. P. May & A. C. Graham.

294 *Entry at rules of Monday, October 4th*, 1869.

C. CASE, REC'R 1ST NAT'L BANK OF N. O.,
vs.
G. T. BEAUREGARD & AL. } 5931.

The complainant is hereby notified that G. T. Beauregard, J'h Hernandez, G. W. Binder, Alexander Bonneval and the N. O. & Carr. R. R. Co., by their solicitors, L. E. Simonds and Lea, Finney & Miller, have this day filed their joint and several demurrer to complainant's bill.

Demurrer.—Filed October 4, 1869.

U. S. circuit court.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET ALS.

The joint and several demurrer of G. T. Beauregard, Joseph Hernandez, G. W. Binder, Alexander Bonneval and the New Orleans and Carrollton Railroad Company.

These defendants, by protestation, not confessing any of the
295 matters in and by said bill complained of to be true in manner and form as the same are therein set forth and alleged, do demur to the said bill, and for causes of demurrer show that the said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainant any relief as against these defendants; wherefore, and for divers other errors in said bill contained and appearing on the face thereof, these defendants do demur thereto, and humbly crave the judgment of this honorable court whether they are compelled or ought to make any further and other answer to the said bill, and they pray to be hence dismissed with their costs in this behalf sustained.

(Signed) L. E. SIMONDS,
Do. LEA, FINNEY & MILLER,
Solicitors.

Lea, Finney & Miller do hereby certify that in their opinion the demurrer herewith filed is well founded in point of law.

(Signed) LEA, FINNEY & MILLER.

The affidavit of these defendants to this demurrer is waived.

(Signed) WM. W. KING,
For Rouse, Solicitor of Complainant.

296 *Motion and order. Time to set down demurrer for hearing.—Entered and filed November* 12, 1869.

In U. S. circuit court, fifth circuit and district of Louisiana. In chancery.

CHAS. CASE, RECEIVER OF THE FIRST NATION. B'K of New Orleans,
vs.
G. T. BEAUREGARD ET AL.
No. 5931.

On motion of J. D. Rouse, solicitor for complainant, and upon suggestion that Thos. P. May, a defendant residing in said district, has not been cited, it is ordered that the complainant have time until the first Monday in January, 1870, to set down the demurrer herein for hearing.

Alias subpœna in chancery to Thomas P. May.—Issued December 16, 1869.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded, as you have heretofore been, to
297 summon Thomas P. May, individually and as member of the firm of G. T. Beauregard, T. P. May, and A. C. Graham, and a citizen

of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of February, 1870, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with the endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 16th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and the ninety-fourth year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

298 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of February, 1870, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received, Dec. 16, 1869, by the U. S. marshal. and on the 18th day of the same month and year served a copy of the within subpœna in chancery on the within named Thomas P. May by delivering the same to him in person at the office of Whitaker and Rice, No. 37 Camp street, in this city.

New Orleans, December 18, 1869.

(Signed) A. FREDERICK,
Sp. Dep. U. S. Marshal.

Motion and order, cause to be tried before circuit judge.—Entered and filed January 11, 1870.

299 In the U. S. circuit court, fifth circuit and district of Louisiana.

CHAS. CASE, REC'R, &C., *vs.* BEAUREGARD ET AL.

On motion of J. D. Rouse, solicitor for complainant, and upon suggesting that it is desired that this cause be tried by the circuit judge, it is ordered that the time for fixing this case be extended ten days.

Motion and order, demurrer fixed.—Extract from the minutes, November term, 1869.

NEW ORLEANS, *Friday, January* 21, 1870.

Court met pursuant to adjournment.

Present, Hon. E. H. Durell, district judge.

CHAS. CASE, REC'R, *vs.* G. T. BEAUREGARD & AL. No. 5931.

On motion of J. D. Rouse, solicitor for complainant herein, it is or-

dered that this cause be set down for argument of the demurrer of def'ts Monday, the 21st day of March next, at 11 a. m., & that def'ts demurring be notified thereof.

300 *Answer of the Fourth National Bank of New York.—Filed February 3d*, 1870.

United States circuit court, fifth judicial circuit, district of Louisiana.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD AND OTHERS. } No. 5931.

To the hon. the circuit court of the United States, fifth circuit, district of Louisiana.

The answer of the Fourth National Bank of New York, one of the defendants named in the above entitled suit, to the complainant's bill of complaint therein filed, respectfully represents:

That it is true that the said bank acquired the interest of Augustus C. Graham in the property and in the partnership between G. T. Beauregard and Thomas P. May, and the said Graham, in the manner and at the dates set forth in the said bill of complaint.

301 That having thus acquired the said property and interest in the said partnership, this respondant brought suit in this hon. court against the New Orleans and Carrolton Railroad Company, the said G. T. Beauregard, G. W. Binder, Alexander Bonneval and others, to have the interest of the said bank in the said partnership and property recognized, and for an account of the business of the partnership; that these parties appeared to be in possession of the said property and claimed the same as owners thereof, denying altogether the rights of this respondant to the any portion of the same. That the United States of America appeared in answer to a call in warranty made by the said railroad company and other defendants in that suit, and also denied the right and title of this respondant to the said property and interest in the said partnership. That upon the issues thus formed the parties to that suit went to trial and there was judgment in favor of the

302 defendants and dismissing the claim and suit of this respondant.

From this judgment this respondant took an appeal to the Supreme Court of the United States, which was duly filed therein, and the said cause is now there pending on appeal.

All of which facts will more fully appear by reference to the record of said suit No. 5359 of the docket of this hon. court.

That the said suit was instituted on or about the day of .

Now this respondant alleges that the issues and matters and things involved in that suit cannot be inquired into or litigated in this suit, so far as the parties to that suit are concerned. That the said Beauregard, the said Bonneval, Binder, and Hernandez, and the said New Orleans and Carrollton Railroad Company, who are parties to the present suit, were parties to that suit as well as the said Government of the United States.

These parties are barred by the pendency of that suit from litigating the same matters in this suit.

303 This respondent, further answering, saith that the said conveyance and transfer from the said A. C. Graham to the Fourth Na-

tional Bank of New York was made, as alleged in the complainant's bill, in order to secure to the said bank the payment of the sum of fifty-five thousand four hundred and sixty dollars, with interest at seven per cent. from the day of , as more fully appears from the annexed certificate of said Charles Case, receiver of said First National Bank of N. O.; that all of the said sum is still due and unpaid.

Respondant alleges that nothing was ever received by the said Fourth National Bank from any of the other property transferred by said Graham to said Fourth National Bank to secure the payment of the above sum; that upon the payment of the amount above set forth the said Fourth National Bank will hold the other property and assets transferred to it by the said Graham for the benefit of whomsoever it
304 may concern, and subject to the orders of this hon. court.

This respondant further represents that the said Fourth National Bank of N. Y. is very desirous of having a full and fair settlement with the said First National Bank and with the receiver thereof, and for the purpose effecting the same is willing, after the various sales and transfers made by the said Thomas P. May, G. T. Beauregard, G. W. Binder, A. Bonneval, Hernandez, the New Orleans and Carrollton Railroad Company, and the Government of the United , of the property in question, shall have been declared null and void, that the property originally belonging to the said A. C. Graham and to the said partnership between him and Beauregard and May shall be sold, together with the lease of the railroad, and that a full and complete settlement shall be thus affected between the complainant and this respondent, such as this hon. court shall deem meet and proper to be made.

(Signed) THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK,

By P. C. CALHOUN, *Pres.*,

305 (Signed) B. SEAMAN, *Cashier.*

Do. ELMORE & KING,

Solicitors for Respondant.

Entry at February rules, 1874.—*Extract from chancery order book, Monday, February 7*, 1874.

CHARLES CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

The Fourth Nat'l Bank of New York, one of the deft's herein, by their solicitors, Elmore & King, have filed on the 3d inst. their answer to complainant's bill.

Motion and order, decree pro confesso as to T. P. May.—Extract from the minutes of February 28, 1870.

CHAS. CASE, RECEIVER OF THE FIRST NAT'L Bank of New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant herein, and
306 it appearing that Thomas P. May, one of the defendants herein, has been duly served with the process of subpœna herein, and

that the usual delay granted him by law for answering has expired, and that he has failed and neglected to enter an appearance or file any answer, plea, or demurrer to complainant's bill of complaint, it is ordered that the same be, and is hereby, taken pro confesso against said defendant.

To the end that such decree may be made thereupon as shall be just, &c.

Continuance of demurrer.—Extract from the minutes of March 21, 1870.

By consent of counsel the demurrer in this case is continued till 2d May next, at 11 a. m.

Order, demurrer sustained.—Extract from the minutes, April term, 18 70.

NEW ORLEANS, *Wednesday, May* 4, 1870.

Court met pursuant to adjournment.

Present, Hon. E. H. Durell, district judge.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

307 For reasons orally assigned by the court, it is ordered that the demurrer to the bill be sustained, the right of the complainant to amend his bill being reserved.

Amended bill of complaint.—Filed June 4th, 1870.

To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana, holding sessions at New Orleans. In chancery:

Humbly complaining unto this honorable court, your orator, Charles Case, a citizen of the State of Indiana, and also receiver of the First National Bank of New Orleans, a company duly incorporated under the laws of the United States, and located in the city of New Orleans, having been duly appointed receiver as aforesaid, under the laws of the United States, and as such authorized to bring this suit before this honorable court against Gustave T. Beauregard, Thomas P. May, who are both citizens of the State of Louisiana, residing in this district, and Augustus C. Graham, who is a citizen of the State of New York, and also against Joseph Hernandez and G. W. Binder and Alexander Bonneval, who are also citizens of the State of Louisiana, residing in this district, and the New Orleans and Carrollton Railroad Company, a company duly incorporated by the laws of the State of Louisiana, and domiciliated and located in this district; and also against the Fourth National Bank of New York, a company duly incorporated under the laws of the United States, and domiciliated and located in the city of New York.

By this his bill of complaint, as amended pursuant to the order of this court, in this cause, made on the fourth day of May, A. D. 1870, respectfully sheweth:

That on or about the 12th day of April, A. D. 1866, the said G. T. Beauregard leased from the said New Orleans and Carrollton Railroad Company the railroad belonging to the said company, together with real estate belonging to said company, the rolling stock thereof, the

movable property of the said company, and all the rights, privileges, and franchises of the said company, for and during the term of twenty-five years, in the manner and form more fully set forth in the Exhibit
308 A, which is a copy of the said lease, and which is annexed to your orator's original bill, and also hereto as a part of this bill.

That although the said lease was made in the name of said Beauregard, it was so made with a view of future partnership, for the carrying on of said business.

That on or about the 18th day of April, 1866, the said Beauregard entered into a contract with the said T. P. May and the said A. C. Graham, such as is more fully set forth in the copy of the said contract which is annexed to your orator's original bill, and marked Exhibit B, and also hereto as part of this bill.

Your orator alleges that under the said contract of copartnership the said parties conducted the business for which it was intended. That the railroad was remodelled, refitted, and changed from steam cars to horse cars, requiring heavy outlays, and many other expenses were incurred by said partnership in their said business.

That in addition to the foregoing expenses, the partnership, in order the more successfully to carry on the said business, made large purchases of real estate, to wit:

1. That purchased from William C. Raymond, by act before Amadee Ducatel, notary public in the parish of Orleans, on the fifth day of May, 1866, consisting of a square of ground, bounded by Napoleon avenue, Berlin, Nayades and Apollo streets, in the city of Jefferson, with all of the improvements thereon, as is more fully described by the copy of said act, which is annexed to your orator's original bill and marked Exhibit C, and also hereto annexed as part of this bill.

2. That purchased from Samuel A. Kohn, by act before the same notary, dated April 30th, 1866, consisting of a square of ground in the city of Jefferson, bounded by Nayades, Apollo, Milan and Berlin streets, as is more fully set forth in the copy of said act, marked Exhibit D, which is annexed to your orator's original bill, and also hereto as part of this bill.

3. That purchased from the said New Orleans and Carrollton Railroad Company, by act before Selim Magner, notary public, in the parish of Orleans, on the 29th day of June, 1866, consisting of a triangle of ground in the town of Carrollton, in the parish of Jefferson, bounded by Levee street, Carrollton avenue and First street, as is more fully described in the act, marked Exhibit E, which is annexed to your orator's original bill, and also hereto as part of this bill.

The said property was purchased in the name of Beauregard alone; but was in fact purchased for the partnership, was paid for out of the partnership funds, and belongs to the said partnership.

4. That purchased from the New Orleans and Carrollton Railroad Company, known as the horse station, situated in the first district of New Orleans, in the square bounded by St. Charles, Felic-
309 ity, Apollo, now called Carondelet, and Polymnia streets, consisting of seven lots, as is more fully and particularly described in the copy of the act of conveyance passed before Selim Magner, notary public, in New Orleans, on the 15th day of January, 1867, and which is annexed to your orator's original bill, and marked Exhibit F, and also hereto as part of this bill.

The said purchase was made in the individual name of said Beauregard, but was in fact purchased for the partnership, was paid for by the partnership, and belonged to the partnership.

5. In addition to the property described as purchased by the partnership, the said firm, by their lease from the said New Orleans and Carrollton Railroad Company, were entitled to the use of a square of ground, situated on the corner of Napoleon avenue and St. Charles street, in the parish of Jefferson, on which they made and erected extensive and valuable improvements, which belonged to the said firm.

Your orator alleges that all, or nearly all, the money paid by the said Beauregard, Graham and May, for the purchase of the said lease, for the improvements and alterations of the railroad, and for the equipment and furnishing of stock and other necessary materials, and for the purchase of real property above described and making improvements thereon, as well as on the property leased, in fact all, or nearly all, the money expended by the said partnership in the said business was obtained from the before-mentioned First National Bank of New Orleans, and that the said partnership were justly indebted to said bank therefor, none of which indebtedness has ever been paid.

That the said partnership opened an account with the said bank in the name of the said G. T. Beauregard, lessee.

That although the account stood in this manner upon the books of the bank, it was in reality the account of the said partnership, for which the partnership was justly and legally liable. A copy of the said account is annexed to your orator's original bill, marked Exhibit G, and also hereto as part of this bill.

That the balance which appears to be still due by said account is only seventy-two thousand and eight dollars and eighty-nine cents ($72,008.89). But that is not the real amount due by said partnership to said bank; the true amount of the indebtedness of said firm to the said bank being two hundred and thirty-seven thousand and eight dollars and eighty-nine cents ($237,008.89) and interest, as hereinafter more fully and particularly set forth.

Your orator alleges that the First National Bank of New Orleans was incorporated and was organized for business about the 28th day of November, 1864.

That the said T. P. May and the said A. C. Graham were leading and active founders of the said bank.

That the said bank was organized by the election of B. F. Flanders as president, and A. C. Graham as cashier.

310 That the said T. P. May was one of the prominent and active directors of the bank from the time of its commencement.

That the said A. C. Graham was elected president of said bank July 12, 1864, and continued to act as president of said bank until the 12th day of July, 1866, at which time he absented himself, going to the city of New York.

Upon his leaving, the said T. P. May was chosen president, to act during the absence of said Graham. The latter, not returning again to New Orleans, the said May was elected president on or about the 6th day of October, 1866. He continued to act in that capacity until about the 8th day of April, 1867, at which time David Burke Forbes, the former vice-president of the bank, was elected president, and continued so to act until the bank was closed by proceedings by the Government of the United States.

That the said T. P. May was a director of the bank, and at all times during its existence exercised a leading influence and control over the bank and its administration.

That while the said T. P. May was acting as president of the bank the aforesaid account of the partnership of Beauregard, Graham and

May, which stood on the books of the bank in the name of "G. T. Beauregard, lessee," being largely overdrawn, in order to settle the overdraft nominally on the books of the bank, he, said May, drew, on or about the 14th day of September, 1866, a promissory note in the name of the said Beauregard, lessee, payable to the First National Bank of New Orleans, on demand, for the sum of forty thousand dollars.

That the said May drew the said note in the name of the said Beauregard, lessee, under a power of attorney from Beauregard, which fully authorized him to do so, and to bind the said Beauregard thereby.

That he caused the amount of said note to be credited to the said account of said Beauregard, lessee, which was in fact, as herein previously stated, the account of the said partnership, and the amount thereof was used for the benefit of said partnership, as hereinbefore stated. That no attempts were ever made to use or collect the said note by the said May, or his successors in office. It remained in the possession of the bank until the final closing up thereof, and is now in the possession of your orator as receiver. The said note which is annexed to your orator's original bill, and also hereto as part of this bill.

Your orator further alleges that the said account of Beauregard, lessee, being again largely overdrawn, to wit, about one hundred and twenty-five thousand ($125,000) dollars, the said T. P. May, on or about the 19th day of March, 1867, drew an instrument purporting to be a bill of exchange in favor of the said First National Bank, payable at forty-five days after sight, on the said A. C. Graham, in New York, for
311 the sum of one hundred and twenty-five thousand ($125,000) dollars, and caused the same amount to be placed to the credit of the said account of Beauregard, lessee.

That the said bill of exchange was never stamped, was never forwarded for presentation, for acceptance or collection, but remained in the bank until it came to the possession of your orator as receiver thereof. The said bill of exchange which is annexed to your orator's original bill, and also hereto as part of this bill.

Your orator alleges that both of the preceding mentioned sums were taken from the bank by the said May, in violation of his duty as an officer of the said bank, and in fraud of the rights of the bank.

That the money thus obtained was used for the benefit of the partnership existing between him and Beauregard and Graham, in purchasing property, paying for the lease, and in carrying on the business of the partnership, and that all of the said partners are liable therefor in solido, with the interest on the same from the date of the conversion of the said money to their use, to wit, on the amount of said note of forty thousand dollars from the said 14th day of September, 1866, and on the one hundred and twenty-five thousand dollars from the 19th day of March, 1867, and on the seventy-two thousand and eight dollars eighty-nine cents from the 25th day of April, 1867.

Your orator further avers that for the payment of the above sum the said First National Bank had a privilege and lien upon all the property of the said partnership, in preference to the individual creditors of any one of the said partners.

That the said property could not be legally conveyed away in payment of the individual debts of any one of the partners, or appropriated to the use of any one of the partners, so as to defeat the rights of the bank against said partnership property.

Your orator avers that John Jay Knox, an officer of the Government of the United States, and special agent of the Treasury Department of

said government, duly authorized and commissioned therefor, took possession of the said First National Bank, its books, and all its assets, and closed the same as an acting bank, on or about the 13th day of May, 1867.

That he thus became aware, and the said government through him as their agent, of the said indebtedness of the said partnership of Beauregard, Graham, and May, to the said bank, and was also aware of the true origin of said indebtedness, and of the fact that the business of the said partnership was mainly carried on by the money of the said bank, and that the funds of the bank invested in the property of the partnership had not been paid.

That notwithstanding this knowledge the said Government of the United States, through John Jay Knox, its agent, induced the said T. P. May to transfer his interest in said partnership to said government, as appears by act 14th May, 1867, before A. Hero, notary public, annexed as Exhibit N; and further, on the 16th May, more formally to transfer and convey to the said government the interests owned by said T. P. May and the said A. C. Graham in the said partnership, and all its property, in payment of an alleged indebtedness due by the said May, individually and personally, the said government, as more fully appears from the copy of the act passed before Andrew Hero, jr., a notary public in New Orleans, dated 16th day of May, 1867, which is annexed to your orator's original bill, and also hereto as part of this bill, and marked Exhibit H.

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Your orator is informed, and so charges, that this pretended conveyance by said May of the interest of said Graham to the said government was made without any legal authority from said Graham to said May, and was further in violation of, and a fraud upon his, Graham's, rights, and is consequently null and void.

Your orator further charges that even if May was authorized to transfer Graham's interest, which is denied, that still the conveyance made by him to pay his individual debts, in both of the preceding acts, was illegal, and was a fraud upon the rights of the First National Bank, as a creditor of the partnership.

Your orator further alleges that the Government of the United States having, by the illegal means above set forth, gotten possession of the interests of the said May and Graham in the said partnership and property thereof, did, by act passed before Gustavus Le Gardeur, jr., notary public in New Orleans, on the 21st day of August, 1867 (the said G. T. Beauregard intervening and becoming a party thereto), transfer and convey the interests of May and Graham, acquired as aforesaid from T. P. May, to the said Alexander Bonneval, G. W. Binder, and Joseph Hernandez, a copy of said act, which is annexed to your orator's original bill, and also hereto as part of this bill, and marked Exhibit I.

That subsequently, to wit, on or about the 31st day of October, 1867, the said United States Government entered into an agreement with the said Bonneval, Binder, and Hernandez, by which the preceding act was annulled, and a new conveyance made by the said government of the said property to the said parties, as more fully appears from the copies of two contracts, dated October 31st, 1867, which are annexed to your orator's original bill, and also hereto as part of this bill, and marked Exhibits J and K.

Your orator further alleges that the said Bonneval and Binder and Hernandez, and the said Beauregard, entered into an agreement on or about the 15th of October, 1867, with the said New Orleans and Carrollton Railroad Company, by which the said lease was surrendered to the

said company, and all the property belonging to the said partnership of Beauregard, Graham, and May. This was done in consideration of the said company assuming all the debts and liabilities of the said part-
313 nership and growing out of the said lease, and also giving four thousand shares of the capital stock of said railroad company to said Beauregard, Bonneval, Binder, and Hernandez, one-third thereof to the said Beauregard, and the remaining two-thirds thereof to the said Bonneval, Binder, and Hernandez; all of which more fully appears from the copy of an act passed before Selim Magner, a notary public in New Orleans, on the 15th day of October, 1867, which is annexed to your orator's original bill, and also hereto as part of this bill, and marked Exhibit L.

Now your orator alleges and charges the fact to be that at and before the time of the said pretended transfers and conveyances by the said Thomas P. May to the United States of his and said Augustus C. Graham's interests in and to the New Orleans and Carrollton Railroad, and the property of the said partnership of the said May, Graham, and Beauregard, each of said partners were largely indebted, without means, and in a state of insolvency, and have ever since been and still are insolvent, so that a suit at law and the recovery of a judgment against them or either of them would afford your orator no relief, because neither of said partners have or had, since the date of the pretended transfers of said partnership property, any property whatever upon which your orator could levy an execution at law, or seize for the satisfaction of the said debt due to said bank.

And your orator alleges, and so charges, that at the time, at which all of the before mentioned acts were passed and conveyances and transfers made, the said Bonneval and Binder and Hernandez, and the said Beauregard, and the said New Orleans and Carrollton Railroad Company, and the said Government of the United States, and the said T. P. May, all were well aware of the indebtedness of the said partnership of Beauregard, Graham, and May, and also of the fact that the money of the said First National Bank had paid for the property conveyed, without any reimbursement having been made to the bank, and also of the fact of said insolvency of the said Beauregard, Graham, and May, individually, and that such insolvency existed at and before the time of said pretended transfers by said May to the United States, and each and all of said parties, both vendors and vendees, well know that all of said pretended sales and transfers were in fraud of the creditors of said partnership and in fraud of the rights of your orator.

Under these circumstances your orator charges that said conveyances and transfers were illegal and fraudulent, and that all of the before mentioned conveyances and transfers of the property of the said partnership, or of any separate interest of the partners in partnership, are null and void, and should be so decreed by this honorable court, and the said property be decreed to be liable for the debt due to the said First National Bank.

Your orator further showeth, and charges the fact to be, that
314 the said Bell, who pretended to authority to transfer and sell the supposed rights of the United States, acquired by the said pretended conveyance by May and Graham to the said Bonneval, Binder, and Hernandez, was without any authority in law to make said sale and conveyance, and that said pretended sale and conveyance of the supposed rights of the United States was made without pursuing any of the formalities of law required in the sale of property belonging to the United States, and the pretended affirmance of said sale and con-

veyance by Edward Jordan, Solicitor of the United States Treasury, was without authority in law, and that all of said acts and pretended sales by the said Bell and said Jordan were therefore null and void, and that they were each without authority, and that the formalities of law were not complied with, was well known to said Bonneval, Binder, and Hernandez and the New Orleans and Carrollton Railroad Company, at the time of their acceptance of the transfers thereof to them.

And your orator further showeth and charges the fact to be, that by the said act passed the 15th day of October, 1867, between the said Carrollton Railroad Company and said Beauregard, Binder, Hernandez, and Bonneval, and known as the act of fusion, and hereto annexed as Exhibit L, the said New Orleans and Carrollton Railroad Company assumed and bound itself to pay all indebtedness of the said Beauregard, Bonneval, Binder, and Hernandez, on account of said railroad, except the notes given by Bonneval, Binder, and Hernandez under said act of August 21, 1867; and thereby the said Carrollton Railroad Company assumed the said debt due to said bank by said partnership and agreed to pay the same.

Your orator further alleges that on or about the 8th day of May, 1867, the said A. C. Graham transferred and conveyed his interest in the said partnership of Beauregard, Graham, and May to the said Fourth National Bank of New York, as more fully appears from the copy of the act which is annexed to your orator's original bill, and also hereto as part of this bill, and marked Exhibit M.

That although the said instrument appears on its face to be an absolute conveyance of his, Graham's, interest, yet in truth and in fact it was only made for the purpose of indemnifying the said Fourth National Bank against certain liabilities which that bank had contracted on account of and for the benefit of the said First National Bank of New Orleans. Your orator cannot state the amount of the indebtedness of the said First National Bank to the Fourth National Bank, growing out of the payment of said liabilities by the said Fourth National Bank, because the amount depends or may depend upon what has been or may be realized from other securities in the hands of the said Fourth National Bank, and for which said Graham had given his personal guarantee to said Fourth National Bank.

Inasmuch as this conveyance was made for the benefit of and
315 in the interest of the said First National Bank, your orator does not seek the avoidance thereof, so far as it can be enforced with due regard to the rights of your orator as a creditor of said copartnership of said May, Beauregard, and Graham, but your orator expressly reserves the right to contest the same, should the interests he represents, as receiver, make it necessary to do so hereafter.

Your orator alleges that the said sum of two hundred and thirty-seven thousand and eight dollars and eighty-nine cents, with interest, as aforesaid, is still due and unpaid by the said Beauregard, Graham, and May, and that they neglect and refuse to pay the same; and that the said New Orleans and Carrollton Railroad Company have also neglected and refused, and doth still neglect and refuse, to pay the same.

That the said Beauregard and Bonneval, and Binder and Hernandez, and the New Orleans and Carrollton Railroad Company refuse to permit the property of the said partnership, now illegally in their hands, to be applied to the payment of the debts of the said partnership; and further, there can be no settlement with the said Fourth National Bank without a sale of the property; and that these acts and doings of the

defendants in the premises, as hereinabove set forth, are contrary to equity and good faith.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises, according to the strictness of the rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said defendants may be ordered to do what is just and proper in the premises, and the necessary decrees therefor may be obtained, and that said G. T. Beauregard, A. C. Graham and Thomas P. May, and the New Orleans and Carrollton Railroad Company, be decreed in solido to pay your orator, as receiver of the said First National Bank of New Orleans, as aforesaid, the said sum of two hundred and thirty-seven thousand and eight dollars and eighty-nine cents ($237,008.89), with interest, as hereinbefore set forth.

And that the various acts of sale, transfer and conveyance of the partnership property of the said partnership of said Beauregard, Graham and May, hereinbefore described, be declared null and void, to wit: The transfer made by said T. P. May to the United States on the 14th of May, 1867, before A. Hero, notary public. Also the act made before the same notary on the 16th of May, 1867, by the said T. P. May, transferring the interest of himself and A. C. Graham to the United States.

Also the transfer and conveyance made by the United States to Bonneval, Binder and Hernandez, by act passed before G. Le Gardeur, jr., notary public, on the 21st day of August, 1867.

Also the two acts made on the 31st of October, 1867, between the United States and Bonneval and Binder and Hernandez.

316 Also the act between the New Orleans and Carrollton Railroad Company and said G. T. Beauregard, and A. Bonneval and G. W. Binder and Joseph Hernandez, called the act of fusion, passed before Selim Magner, notary public, on the 15th day of October, 1867. That these acts be declared specially null and void, as against the rights of your orator, and that the property therein conveyed and transferred be decreed to be liable to the payment of the amount due to the said First National Bank of New Orleans.

And, further, that the marshal of this honorable court be ordered to seize and sell the same in due course of law. And that after the payment of the amount due to your orator, as receiver, etc., to the amount of the claim of the First National Bank of New Orleans, the balance of the proceeds be disposed of as the law may direct.

And that your orator may have such other and further relief in the premises as the nature of the case requires.

May it please this honorable court to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said G. T. Beauregard, T. P. May and A. C. Graham, composing a partnership, individually and as members of the firm.

Also to the New Orleans and Carrollton Railroad Company, represented by the president thereof.

Also to Alexander Bonneval, G. W. Binder and Joseph Hernandez.

Also to the Fourth National Bank of New York, represented by P. C. Calhoun, the president thereof, commanding them and each of them, at a certain day, to appear before this honorable court, and then and there to answer all and singular the premises, and to perform and abide such order and decree therein as to this honorable court shall seem meet, and your orator shall ever pray, etc., etc.

Your orator further represents that under the aforesaid act of fusion between the said New Orleans and Carrollton Railroad Company and

G. T. Beauregard and Alexander Bonneval and G. W. Binder and Joseph Hernandez, the beforementioned four thousand shares of the capital stock of the said railroad company were given to the said Beauregard, Bonneval, Binder and Hernandez in lieu of the property belonging to the said partnership of Beauregard, Graham and May, and that complainant fears that the said stock may be transferred by the said parties to third persons, greatly to the injuary and embarrassment of the rights of complainant, as receiver as aforesaid.

He therefore prays that the said Beauregard and Bonneval and Binder and Hernandez be enjoined by order of this honorable court, and restrained from transferring, alienating or encumbering the said stock, or any part thereof, in any manner, to the prejudice of the rights of complainant, and that the said New Orleans and Carrollton Railroad Company be also enjoined from permitting or recognizing in any manner any such transfer of said stock, to the prejudice of the complainant's rights as receiver as aforesaid, and for all other relief in the premises, etc., etc.

J. D. ROUSE,
P. H. MORGAN,
Solicitors for Complainant.

317 *Agreement to enter appearance, &c.—Filed June 30th*, 1870.

In U. S. circuit court, fifth circuit & district of La. In chancery.

CHAS. CASE, RECEIVER OF 1ST NATIONAL BANK, &c.,
vs.
G. T. BEAUREGARD ET AL.

It is agreed that defendants herein will enter their appearance to compl'ts amended bill & shall have until September 1st, 1870, to plead, answer, or demur thereto; but in case of emergency either party may take testimony prior to that time the same as if the cause was at issue.

(Signed) J. D. ROUSE,
Sol. for Compl't.

Do. LEA, FINNEY & MILLER,
Att'ys for Def'ts.

THE N. O. & CARROLLTON R. R. CO.
G. T. BEAUREGARD.
A. BONNEVAL.
JOSEPH HERNANDEZ.
G. BINDER.

In the above cause I hereby consent that the defendants may have until and including the first Saturday in October next to answer the amended bill.

Aug. 24, 1870.

(Signed) C. CASE, *Receiver, &c.*

REC. 191—8

318 *Subpœna in chancery on amended bill to T. P. May.—Issued September 26, 1870.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Thomas P. May, individually and as member of the firm of G. T. Beauregard, T. P. May, and A. C. Graham, & a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1870, then and there to answer an amended bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

319 Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 26th day of September, in the year of our Lord one thousand eight hundred and seventy, and the 95th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1870, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received, Sep. 26, 1870, by the U. S. marshal, and after diligent search and inquiry Thos. P. May, esq., def't named within, could not be found before the return hereof.

New Orleans, Nov. 7, 1870.

(Signed) GUS. HOLLANDER,
D'y U. S. Marshal.

320 ANSWER.

Answer of the New Orleans and Carrollton Railroad Company, Joseph Hernandez, Alexander Bonneval, and George Binder.—Filed October 19, 1870.

U. S. circuit court.

CHARLES CASE, RECEIVER FIRST NATIONAL Bank of New Orleans,
vs.
THE N. O. & CARROLLTON RAILROAD COMpany et als. } No.

The answer of the New Orleans and Carrollton Railroad Company, and of Joseph Hernandez, Alexander Bonneval and George Binder, defendants herein, to the original and amended bill of complaint of Charles Case, receiver of the First National Bank of New Orleans.

These defendants, the New Orleans and Carrollton Railroad Company,

a corporation duly established by law, domiciled in New Orleans. Joseph Hernandez, Alexander Bonneval and George Binder, now and at all times hereafter reserving to themselves all manner of benefit and advantage to themselves of the many errors and insufficiencies in such bill contained, for answer thereunto or unto so much as these defendants are advised is material for them to make answer unto, say:

They admit that said Case is receiver of said bank.

They admit that on the 12th day of April, 1866, G. T. Beauregard did lease from said company, one of these defendants, the railroad and other property appertaining thereto, as the same more fully appears by reference to the act of lease filed by complainant as Exhibit A, to which reference is made as part hereof. These defendants admit that said lease was made in the name of said Beauregard for the benefit of the partnership hereinafter referred to; that on the 18th of April, 1866, a contract was entered into by said T. P. May, Augustus C. Graham and Gustave T. Beauregard for the conducting of said railroad under said lease, by which said Beauregard was to manage said road at a salary of $5,000 per annum; to have no share of the profits made on loans or debts incurred in said enterprise until the reimbursement to said May and Graham of the capital stipulated in said act to be furnished by them, with interest thereon, as shown by said contract, a copy whereof is filed by complainant as Exhibit B, to which reference is made as part hereof. And defendants admit that as restricted, modified and subject to the terms and stipulations thereof, said contract was a partnership, and that under it the business thereof was conducted, the railroad remodelled, changed from steam to horse cars, and heavy outlays were incurred by said partnership.

These defendants admit the purchases set forth in complainant's bill, to wit, that of W. C. Raymond of date 5th May, 1866; that from Samuel A. Kohn; that from the New Orleans and Carrollton Railroad Company of date the 29th June, 1866; and that from said company of date the 15th January, 1867, as appears from the Exhibits C, D, E, F, filed with complainant's bill, referred to as a part hereof. They admit that said purchases were made for said partnership and paid for with its funds. They further admit that by said lease said partnership was entitled to the use of a square of ground, corner of St. Charles street and Napoleon avenue, on which said partnership made valuable improvements; but they aver that by the terms of said lease said improvements were to revert to said company at the expiration of said lease, without costs to said lessor.

These defendants aver that said partnership kept but one bank account, that kept with said bank; that there was expended by said partnership from and out of its own funds, prior to September 6th, 1866, for the purchase of said lease, the improvement and alteration of said railroad, for the equipment and furnishing of stock and other necessary materials, for the purchase of the real property above described, and for improvements on it, and for other purposes connected with said partnership business, a large amount of money, no portion of which funds were derived from said bank, and the bulk of said proper funds were deposited with and held by said bank, and by it were disbursed to said partnership from time to time, as in the ordinary course of accounts between the bank and its customer. And a statement of the funds so expended and the object of said expenditure is herewith filed as Schedule No. 1, to which reference is craved.

321 These defendants further aver that to facilitate said May and Graham in furnishing the money stipulated by said contract, and

at their special instance and request, it was provided therein that said Beauregard, lessee, should deposit the funds and keep the account of said partnership in said bank, which was done by said lessee; and said Beauregard was given to understand by said May and Graham, and did understand, that he, as lessee, should check upon said bank for the wants of said partnership, and that proper business arrangements would be made by them (said May and Graham) to the end that the necessary funds should be provided by them and put to the credit of said lessee in said bank to meet the checks so drawn. And in this mode, the stipulations in said contract relative to the furnishing of funds would be fulfilled by said May and Graham through and by said business arrangements to be by them effected, without any personal liability or obligation of him (said Beauregard) for the money paid by said bank upon said checks.

Defendants further aver that during the existence of said partnership said Beauregard only received his said salary, and the partnership made no profits.

These defendants further aver that the stipulations in said act of partnership, relative to the furnishing of said money requisite therefor by said May and Graham, to the management of said road by Beauregard, as lessee, for a fixed salary for his personal services, and in respect to the period when, according to said contract, his participation in the profits and liability for the debts of said partnership was to commence, and the actual pecuniary condition of said partnership, was at all times well known to said bank through some of its executive and administrative officers; that save and except the understanding aforesaid, and the bare presentation and payment of said checks at the counter of the bank, no intercourse or negotiation of any kind or nature, relative to said checks or their payment, or of or concerning the same, ever took place between said Beauregard and the officers of said bank, or any of them.

These defendants admit and aver that in the absence of any such intercourse or negotiation between said bank and said Beauregard, relative to said checks or their payment, save as aforesaid, and with such knowledge of the aforesaid fact, on the part of said bank, as is hereinbefore set forth and charged as in its knowledge, there was obtained from said bank, at various times subsequent to the 6th Sept., 1866, for said partnership, upon the checks of said lessee, drawn by him in accordance with the aforesaid understanding between May, Graham and said Beauregard, hereinbefore set forth, the sum of seventy-two thousand and eight dollars and eighty-nine cents, being the balance of account shown by Exhibit G, filed with complainant's bill. And defendants admit that no part of said balance has been paid.

322 Defendants further admit that on the 14th September, 1866, said bank entered to the credit of said Beauregard, lessee, the sum of forty thousand dollars; and on the 19th March, 1867, said bank entered to the credit of said lessee the sum of one hundred and twenty-five thousand dollars. And defendants admit and aver that without any intercourse or negotiation between said bank and said Beauregard, save as aforesaid, and with such knowledge of the facts aforesaid, hereinbefore set forth and charged to have been in the knowledge of said bank, there was obtained from said bank, at various times subsequent to 6th September, 1866, for said partnership, upon the checks of said lessee, by him drawn in accordance with the aforesaid understanding between May, Graham and himself, hereinbefore set forth, the amount

of said two credits, so entered by said bank to the credit of said lessee.

These defendants admit and aver that a part of the money expended by said partnership, that is, that part expended between the 6th September, 1866, and 11th May, 1867, consisted of the proper funds of said partnership, no portion of which was derived from said bank, and of the aforesaid $72,008.99, and the amount of said two credits; and a schedule showing that part expended, the sources from whence derived, and the items of said expenditure, is herewith filed as No. 2, to which reference is craved as part hereof. And these defendants, except as stated and explained herein, deny that any portion of the money expended by said partnership was obtained from said bank, and they submit whether the facts stated warrant the conclusions of indebtedness set forth in complainant's bill.

These defendants admit and aver that said account, filed as Exhibit G, embracing, as it does, said two credits, entered by said bank, and the checks drawn by said lessee in accordance with the understanding between May, Graham and Beauregard, hereinbefore set forth, and in the absence of any negotiation or intercourse between said bank and said Beauregard, save as aforesaid, and with the knowledge on its part of the facts hereinbefore set forth and charged as in its knowledge, paid by said bank, is, as stated and explained herein, the account opened with said bank by said lessee for said partnership.

The defendants admit that said bank was incorporated and organized about the 28th November, 1864; that May and Graham were among its active founders; that B. F. Flanders was elected its president, and A. C. Graham its cashier; that said May was a prominent director; that said Graham was elected president thereof on 12th July, 1864, continued so to act until 13th July, 1866, when he absented himself; that, upon his leaving, T. P. May was chosen its president; that Graham not returning, said May was elected its president on or about the 12th October, 1866; that he continued so to act until the 12th April, 1867,
323 when D. B. Forbes, the former vice-president, was elected president, and continued so to act until the bank was closed by the government under the national banking law; that at all times said May exercised an influence over the administration of said bank, which these defendants believe was leading in its nature.

Defendants admit and aver that while said May was acting as president aforesaid, owing to the checks drawn by said lessee, in accordance with the understanding between May, Graham, and Beauregard, hereinbefore set forth, and to the fact that without any negotiation or intercourse between said bank and said lessee, save as aforesaid, and with the knowledge of the facts hereinbefore set forth and charged as in its knowledge, the bank paid said checks, the said account became and was overdrawn on the 15th September, 1866. Defendants admit that then said May did hold a power authorizing him to draw promissory notes for his principal's debts, and only for the debts of his said principal; that holding said power said May, on or about the 14th September, 1866, did draw a promissory note in the name of said Beauregard, lessee, payable to the First National Bank of New Orleans on demand, for forty thousand dollars.

These defendants further admit and aver that on said 15th Sept., 1866, without any agency of said Beauregard to procure the entering of the credit of $40,000, hereinafter spoken of, or in respect thereto, said bank did enter to the credit of said Beauregard, lessee, the aforesaid credit of $40,000. And defendants believe and admit it was by and through

the action of said May in that behalf that said bank entered said credit. Save as aforesaid, defendants cannot set forth as to their belief or otherwise whether said May caused said note to be credited to said account, or whether said note was drawn to settle said account nominally; and defendants submit to the court whether, under the facts stated, said power authorized said May to draw said note.

These defendants believe it to be true that no attempts to collect said note were made; that it remained in the bank's possession until the closing up thereof; is now in complainant's possession and is annexed to his bill.

These defendants further admit and aver, that owing to the checks drawn by said Beauregard, lessee, under his aforesaid understanding with said May and Graham, hereinbefore set forth, and that with the knowledge aforesaid on the part of said bank of the aforesaid facts charged in this answer to have been in its knowledge, and without any intercourse or negotiation between said bank and said Beauregard, save as aforesaid, the bank paid such checks; that said account of said lessee became and was overdrawn on said 13th March, 1867. And defendants admit and aver that on said date said May did hold a power of attorney from said Graham, which fully authorized said May
324 to draw the bill hereinafter spoken of, as appears by said power filed with this answer as Exhibit E. And that holding such power, said May did, on or about said date, draw a bill of exchange upon A. C. Graham for $125,000, payable forty-five days after sight, in favor of said bank. And these defendants admit and aver that on said date said bank did enter to the credit of said Beauregard, lessee, $125,000. Defendants believe it to be true that it was by and through said May's action in that behalf that said bank entered said credit. Defendants believe it to be true that said bill, though delivered to said bank, was never stamped or forwarded for presentation or acceptance by said bank, but remained in its possession until it came into complainant's control, and is annexed to his bill.

These defendants submit whether, under the facts stated, said sums of $40,000 and $120,000 were taken from said bank by said May in violation of his duty and in fraud, as in said bill alleged.

These defendants aver and maintain that by the acts of sale, transfer, and conveyance by Thomas P. May to the United States, of date the 14th May, 1867, and 16th May, 1867, passed before A. Hero, notary, filed with complainant's bill as Exhibits N and H. and as is more fully explained hereinafter, said United States acquired a perfect legal and valid title to the property the subject of and conveyed by said acts; that to said property Joseph Hernandez, Alexander Bonneval, and George Binder acquired a perfect legal and valid title by the acts of sale, assignment, and conveyance from said United States, of date the 21st August, 1867, and 31st October, 1867, filed with complainant's bill as Exhibits I, J, and K, and as is more fully explained hereinafter; and this defendant, the New Orleans and Carrollton Railroad Company, by the act of date the 15th October, 1867, filed with complainant's bill as Exhibit L, and as is more fully explained hereinafter, acquired a perfect legal and valid title to all the property acquired by said partnership embracing all the property acquired by the United States and by said Hernandez, Binder, and Bonneval, under the various acts aforesaid. And these defendants deny that the complainant, or the bank he represents, has any right, claim, or demand, of any nature whatsoever, upon said property.

The defendants admit that John J. Knox, as agent of the Treasury

Department, took possession of said bank—its assest; closed the same as an acting bank about the 13th May, 1867. Defendants believe and admit that said Knox became aware of said account of Beauregard, lessee, of said balance that said bank, with the knowledge aforesaid of the facts charged herein to have been in its knowledge, and without any intercourse between said bank and said Beauregard, save as aforesaid, had paid upon his checks, as lessee aforesaid, the amount of said balance and of said credits. And said Knox also became aware
325 that said amounts had been used in the business of said partnership. Save as aforesaid, and as hereinafter set forth, these defendants cannot set forth, as to their belief or otherwise, whether the said Knox or the United States had any knowledge of the dealings between said bank and said partnership.

These defendants aver that, besides said money obtained from said bank, a part of the capital of said partnership was furnished. They believe and aver that all of said capital furnished was the means of said May. That on said 16th May, 1867, said Graham was indebted to said May in settlement of said partnership and of its accounts. That on said date said partnership was indebted, in the sum of one hundred and seventeen thousand seven hundred and twenty-five dollars and eighty-eight cents, to the parties named in the annexed schedule, marked No. 3, to which reference is craved as part hereof; which indebtedness was secured by mortgages and privileges, and was still unpaid on the 15th October, 1867, when this defendant (said company) acquired the property set forth in the act of that date passed before S. Magner, notary. That said May became indebted to said United States, and was so indebted on said 16th May, 1867, in the sum of one million and seventy-six thousand seven hundred and ninety-two dollars and twenty-nine cents, all of which was then due and owing, and for the payment of which said United States had a right of priority upon all his property. That, owing to his said condition, said May was unable to carry on said partnership. That on said date said May held a power from said Graham authorizing said May, among other things, to sell and buy real estate for such price and on such terms as in his discretion seemed fit; to dissolve any partnership in which said Graham was or might be a partner; to make any settlement, transaction, compromise or otherwise of any concern or matter.

All of which more fully appears by reference to said power, filed with this answer as Exhibit E, to which reference is craved.

These defendants further aver that, on said 16th May, 1867, said railroad was incomplete. For its completion and to carry out the enterprise of said partnership a large outlay of money was requisite. All its capital furnished and all its earnings had been consumed in its business. That by the terms thereof said lease could not be transferred without the consent of this defendant (said company).

Now these defendants admit and aver that, under the state of facts relative to said partnership then existing, said May acting for himself and as the agent of said Graham, and as set forth in the act, did, on the 16th May, 1867, sell, assign, convey, and deliver to the United States the following property:

"All and singular the right, title, interest, share, property, claim, and demand of every nature and kind whatsoever of them, the said Thomas P. May and Augustus Clason Graham, and of each of them, in and to the New Orleans and Carrollton Railroad, the lease and other fran-
326 chises thereof, and the railroad tracks, rolling stock, engines, cars, live-stock, and other appurtenances thereunto belonging or in

anywise appertaining, the same having been acquired by the said May and Graham by the provisions of certain articles of copartnership entered into between them and Gustave Toutant Beauregard, for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred and sixty-six." (As is more fully set forth in the acts filed with complainant's bill as Exhibits H and N, to which reference is craved.) For and in consideration of the price of four hundred and eighty thousand dollars, which, as agreed upon by said United States and said May, was to be settled and liquidated by the granting of an acquittance and discharge by the United States to said T. P. May of so much of his said indebtedness to the United States and of said price as said United States might receive from the sale of the property conveyed. That said consideration was settled and discharged by the United States as stipulated in said act. That said United States did subsequently sell said property for two hundred and eighty thousand dollars, as is more fully hereinafter set forth; the said May declaring in said act of sale that though it would appear from the premises said Graham was a part owner of said property, yet in truth said May was the owner of the apparent interest of said Graham. All of which more fully appears by said act of conveyance, sale, and transfer passed before A. Hero, notary, of said date; and the act of which it is confirmatory passed before same notary, of date the 14th May, 1867, filed as Exhibits H and N with complainant's bill, to which reference is craved. That said United States was represented in said conveyance by said Knox, who was its duly authorized agent in the premises, with full power from said United States, through its proper official, to act in respect to and accept said conveyance for said United States.

These defendants aver that, under the facts herein stated, said May had authority from said Graham to make said conveyance, but whether it is deemed said May had or had not said authority from said Graham, defendants insist and maintain that, under all the facts herein stated and the law arising thereon, said May had the right to make said conveyance; that the same is legal and valid in all respects, and vested in the United States a perfect title to said property conveyed. And defendants deny that the same is fraudulent, null, and void, as alleged in complainant's bill.

These defendants aver and admit that the United States, having acquired title to the property conveyed as aforesaid by said May to said United States by two acts, one dated 21st August, 1867, and one dated 31st October, 1867, sold, assigned, conveyed, and delivered said property to those defendants, Joseph Hernandez, A. Bonneval, and G. Binder,
for the price and sum of two hundred and eighty-eight thousand
327 dollars, which by said purchasers was paid to said United States as stipulated in said acts, which are filed with complainant's bill as Exhibits I, J, and K, to which reference is craved as part hereof. That although William Bell, who executed on behalf of said United States said conveyance of date the 21st August, 1867, was fully authorized for and on behalf of said United States to make said conveyance for said price, and to enter into all the other stipulations in said act contained, except such of said stipulations as are omitted and differ from the two acts executed by the Solicitor of the Treasury of date the 31st October, 1867, filed with complainant's bill as Exhibits J and K; yet some of the stipulations contained in said act executed by Bell did not meet the approval of said solicitor, and therefore said solicitor executed said act of sale and transfer of said property, and the other act relative

thereto, both executed by said solicitor, of date 31st October, 1867, filed as Exhibits I, J, and K with complainant's bill, to which reference is craved as part hereof. Under which said acts, and in accordance therewith, those defendants, J. Hernandez, A. Bonneval, and G. Binder, paid said price of two hundred and eighty-eight thousand dollars to said United States, acquired and received delivery of the aforesaid property to them conveyed. That said Solicitor of the Treasury had full power under the law to execute said acts.

These defendants further admit and aver, that on 15th October, 1867, by act passed before S. Magner, notary, between said Hernandez, Bonneval, Binder, this defendant, the New Orleans and Carrollton Railroad Company, and said Beauregard, the aforesaid lease was cancelled and annulled, and all the property acquired by said partnership was conveyed, delivered to and acquired by this defendant, The New Orleans and Carrollton Railroad Company, for and in consideration of four hundred thousand dollars of the capital stock of the said company—say four thousand shares—which by this defendant (said company) were delivered to and secured by said Beauregard, Hernandez, Binder, and Bonneval, under and in accordance with the terms and conditions of said act; by virtue whereof this defendant (said company) secured possession and delivery, acquired and is now vested with the title to the following property, conveyed by said act, as appears by said act filed with complainant's bill as Exhibit L, to which reference is craved as part hereof, to wit:

"All the railroad improvements, the tracks, horses, mules, or whatever other live stock; the cars, harnesses, rolling stock, engines, and improvements acquired by, placed and put upon said road by said partnership, and appurtenances thereof. That certain square of ground, described as number sixty-six in the city and parish of Jefferson, fully described in Exhibit D filed with complainant's bill. That certain square
of ground, designated as number sixty-five in the city and parish
328 of Jefferson, fully described in Exhibit C filed with complainant's bill. That certain lot of ground in the town of Carrollton, parish of Jefferson, fully described in Exhibit E filed with complainant's bill. Several certain lots in the first district of this city, in square bounded by St. Charles, Felicity, Apollo, and Polymnia streets, fully described in Exhibit F filed with complainant's bill. And other property, as is more fully shown by reference to said act of date 15th October, 1867, embracing all property acquired by the United States, and by said Hernandez, Binder, and Bonneval, under the acts of sale, transfer and assignment aforesaid."

These defendants deny that at or before the date of said conveyance from May to the United States he was possessed of no means; they aver, on the contrary, that at and before said date, said May was possessed of large means and property; that said May has never applied for the benefit of the bankrupt act. Defendants admit that at and before said date, said May was largely indebted. They believe that said May was at the date referred to, and since has been, insolvent. And defendants believe that since said transfer by him, said May has not been possessed of any means or property, except such as is of inconsiderable value.

These defendants do not admit that said Graham was, at the time of said transfer of May, possessed of no means. They believe and aver that said Graham was then possessed of means and property. They admit that, though possessed of said means and property, said Graham was at and before said date largely indebted. They believe and aver that said Graham is now possessed of means and property; that he has

never applied for the benefit of the bankrupt law; and save as aforesaid, defendants cannot state as to their belief or otherwise whether said Graham is or was insolvent.

These defendants deny that said Beauregard, at and before said date of said conveyance to the United States, was possessed of no means; they believe and aver that he was always possessed of some means. They submit whether, under the facts herein stated, he ever was or is liable for the money obtained for said partnership from said bank under the circumstances herein stated; and if decreed not liable, he is and always has been solvent. They aver that said Beauregard is now possessed of some means and property, but admit the same is inconsiderable in proportion to the amount claimed by complainant.

These defendants admit, that at the date of said acts of 21st August, 1867, 31st October, 1867, and 15th October, 1867, they knew that, with the aforesaid knowledge, on the part of said bank, charged in the answer, there had been obtained from said bank for said partnership, upon the checks of said Beauregard, lessee, drawn by him in accordance with the aforesaid understanding between him and said May and Graham, hereinbefore set forth-
and paid by said bank without any negotiation or intercourse be,
329 tween said bank and said Beauregard, save as aforesaid, the sum of $72,000.89, being the aforesaid balance. And these defendants knew that no part of said balance, obtained under the said circumstances, had been paid. These defendants further admit and aver, that at said dates last referred to, they knew that, with the aforesaid knowledge, on the part of said bank, of the facts charged in this answer to have been in its knowledge, there had been obtained from said bank for said partnership, upon the checks of said lessee, drawn by him in accordance with the understanding between May, Graham, and himself, hereinbefore set forth, and paid by said bank without any intercourse or negotiation between said bank and said Beauregard, save as aforesaid, the amount of the two aforesaid credits. And these defendants further admit they then knew the circumstances under which said credits were entered, as the same are set forth in this answer; and they admit they knew that said amounts obtained upon said checks had been used in the business of and for said partnership. And except as stated and explained herein, defendants deny they had any knowledge touching the business or relations between said bank and said partnership. These defendants further admit that at the date of said acts they believed the pecuniary condition of said May, Graham, and Beauregard to be as they here set forth the condition of said May, Graham, and Beauregard in this answer, and defendants deny any other or further knowledge of said condition. These defendants deny that the sales and transfers of date the 14th May, 1867; 16th May, 1867; 21st August, 1867, and 31st October, 1867, set forth in this answer, were in fraud of the alleged rights of said bank; and they aver and maintain that said sales were legal and valid in all respects, and they deny that the property conveyed by said sales and transfers is liable, in any manner whatever, for the alleged debt claimed by complainant.

These defendants submit to the judgment of the court, whether said Beauregard is or ever was liable for the aforesaid money obtained from said bank, under the fact stated herein. But even if it be decreed he was liable, which they deny, these defendants aver and maintain that the stipulations in said act, of date the 15th October, 1867, relative to the debts of said railroad company, and to the liability therefor, referred to in complainant's bill, neither imposes or recognizes any obligation whatever on the part of this defendant (the New Orleans and Carrollton

Railroad Company) to the complainant or the bank he represents. That no benefit or advantage whatever to said bank was contemplated or stipulated by said act; and defendants deny that said company, by said stipulation, recognized in any manner whatever, or agreed to pay, the alleged and pretended debt claimed by complainant.

These defendants admit the execution of the writing purporting to be an assignment of the pretended rights of said Graham, in and to the property of said partnership, to the Fourth National Bank.

330 They believe that at the execution thereof, said Fourth National Bank had assumed liabilities for the First National Bank; but these defendants believe and aver that said liabilities have been satisfied by the monies realized upon bills drawn by the First National Bank and other securities which were placed in the hands of said Fourth National Bank by said Graham, to indemnify it against such liabilities. And these defendants believe that said writing was executed for the avowed purpose of securing said Fourth National Bank against said liabilities, but these defendants deny that by reason thereof said Fourth National Bank acquired any rights or claims whatever upon the property conveyed by said May to the United States, and that acquired by this defendant (the New Orleans and Carrollton Railroad Company) by said act of date the 15th October, 1867.

These defendants, Hernandez, Bonneval, and Binder, aver that, prior to the instituting of this suit, they had sold and parted with all the stock acquired by them under the terms of said act of 15th October, 1867, for a valuable consideration to them paid therefor by the purchasers thereof.

These defendants aver that between the date of said transfer by said May to said United States and the 15th October, 1867, said road was managed and directed by said Beauregard. That during said period the United States expended six thousand dollars for the expenses of said road.

These defendants further show to the court that, by the article 1982 of the Civil Code, it is declared that "No contract made between the debtor and one of his creditors, for the purpose of securing a just debt, shall be set aside under this section, although the debtor were insolvent to the knowledge of the creditor with whom he contracted, and although the other creditors are injured thereby, if such contract were made more than one year before bringing the suit to avoid it, and if it contain no other cause of nullity than the preference given to one creditor over another." And these defendants further show that if the complainant, or the bank he represents, ever had any cause of action or suit against these defendants, or either of them, for or concerning any of the matters in his said bill contained, or concerning the property aforesaid, acquired by one of these defendants, the New Orleans and Carrollton Railroad Company, by said act of date the 15th October, 1867, passed before S. Magner, notary, or concerning the aforesaid property sold by said May to said United States by said acts of date the 14th and 16th May, 1867, passed before A. Hero, notary, which these defendants do in no sort admit, but deny, such cause of action, or suit, did accrue to said First National Bank, or to those representing it, under the law, at the date of said acts, when the property the subject of them was transferred, conveyed, and delivered, for the consideration stated in said acts,

331 then paid, given and passed between the parties to said acts, and as stated in them, and subsisted for one year thereafter and no longer; and no such suit or action was brought by said bank, or by any one representing it under the law, or by complainant within said

one year, or within one year from the date of complainant's appointment as receiver aforesaid, and the date when he took charge of said bank and began to act as receiver, which was not later than the 1st August, 1867, and by reason whereof complainant cannot maintain this suit, and these defendants insist upon said article of the Civil Code as matter of defense to this suit, and claim the benefit and advantage of the prescription and limitation established by said article.

These defendants believe that Wm. Bell, who was the agent of the United States and the Solicitor of the Treasury, knew on the 21st August, 1867, and 31st October, 1867, of said account of Beauregard, lessee, with said bank, of the aforesaid balance shown by it, of said credit of $40,000 entered by said bank in said account, of said note of $40,000, that by said May it had been delivered to and was held by said bank, that said balance and said credit had been in the mode, under the circumstances and in accordance with the understanding between said May, Graham, and Beauregard, hereinbefore set forth, obtained from said bank for said partnership, and used in its business; save as aforesaid, these defendants cannot set forth, as to their belief or otherwise, whether said United States had any knowledge whatever touching the business or relations between said First National Bank and said partnership or as to the results thereof.

These defendants believe that the condition of said May, as they have set it forth herein, was on said 21st August, 1867, and 31st October, 1867, known to said Solicitor and to said Bell; save as aforesaid, these defendants cannot state as to their belief, or otherwise, whether said United States had any knowledge whatever touching the pecuniary condition of said May, Graham, and Beauregard.

And these defendants deny all other matter and thing in such bill charged material for them to make answer unto, and not herein sufficiently answered, avoided, or denied, as true to their knowledge or belief. All of which these defendants are ready to aver and prove, and pray to be herein dismissed with their costs in this behalf most wrongfully sustained.

G. T. BEAUREGARD,
Prest. N. O. & C. R. R. Co.
J. HERNANDEZ.

L. E. SIMONDS, and
LEA, FINNEY & MILLER,
Solicitors.

G. T. Beauregard, president of the New Orleans and Carrollton Railroad Company, A. Bonneval, G. Binder, and Joseph Hernandez, being duly sworn, depose and say that all the matters and things in the foregoing answer contained which are stated upon the personal knowledge of these affiants are true and correct, and those stated upon the information of others they believe to be true.

G. T. BEAUREGARD,
Prest. N. O. & C. R. R. Co.
J. HERNANDEZ.

Sworn to and subscribed before me October 19, 1870.
F. B. VINOT, *Deputy Clerk.*

U. S. circuit court.

C. CASE, RECEIVER,
vs.
THE N. O. & C. R. R. CO. ET ALS. } No. .

It is agreed that the answers in this case shall be filed without the

usual affidavit and signatures of defendants, provided the answers are sworn to as soon as defendants arrive, say by the 15th of November, 1870.

September 22, 1870.

ELMORE & KING,
Solicitors for Complainant.

And that the time for filing the answers shall be extended to the 20th October, 1870.

J. D. ROUSE, *Solicitor.*

332 SCHEDULE No. 1.

Filed with answer of the New Orleans and Carrollton Railroad Company and others, October 19, 1870.

Statement of receipts and expenditures from date of partnership between Beauregard, May, & Graham to September 6, 1866.

RECEIPTS.

CAPITAL FURNISHED 1866.		From capital invested and contributed to partnership	$88,000 00
April 16	$20,000		
May 4	20,000		
June 9	20,000	From earnings of road	65,263 95
June 16	8,000		
July 10	20,000		
	$88,000	Total receipts	$153,263 95

EXPENDITURES.

Current working expenses		$53,478 79
Monthly payment on lease, 4½ months, at $1,666.66 per month		7,499 97
Painting steam-cars		2,975 00
Purchase of buggy		184 35
Purchase of horses		7,097 90
Reconstructing railroad track, viz:		
Cross-ties, and hauling and freight on same	$2,768 89	
Brickbats and sand for filling	381 20	
Lumber, including hauling and freight	13,932 11	
Iron, curve castings and turntables	9,956 91	
Nails and spikes	1,234 59	
Labor	6,861 95	
		35,135 65
Construction of stable buildings and car shed, also boarding house for employees, etc., as follows:		
Bricks and hauling	$3,547 75	
Lime and sand	1,026 50	
Lumber and hauling	3,753 27	
Shingles and weather-boarding	1,269 29	
Labor	2,586 44	
		12,183 25
Cash payment on property corner of Napoleon and St. Charles avenues, purchased from widow S. J. Peters, April 28, 1866, (being part of purchase price on the property.)		6,000 00
Cash payment on property purchased from S. A. Kohn, April 30, 1866, in square bounded by St. Charles, Apollo, Berlin and Milan streets (being part of price as per act filed as exhibit)		2,666 65
Cash payment on property purchased from W. C. Raymond, May 5, 1866, square bounded by St. Charles and Napoleon avenue and Apollo and Berlin streets, (being part of price as per act filed as exhibit)		4,166 65
Cash payment on Carrollton Hotel, bought June 29, 1866, from N. O. and C. Railroad Company		8,666 66
Cash payment on lease of hotel, purchased from P. Williams, June 16, 1866		8,000 00

Cash paid for purpose of stocking hotel	1,000 00	
Repairs to real estate, brokerage, etc.	2,109 84	
Total expenditures		151,164 71
Cash balance, September 6, 1866		$2,099 24

Of the expenses the following were for purchases of real estate by the partnership:

Cash payment on property corner Napoleon and St. Charles streets, purchased from widow S. J. Peters, on 28th April, 1866	$6,000 00
Cash payment on square bounded by St. Charles, Apollo, Berlin, and Milan streets, as per act of purchase thereof from S. A. Kohn, filed with bill as Exhibit D, date of payment is April 30, 1866	2,666 65
Cash payment on property purchased from W. C. Raymond, in square bounded by St. Charles, Apollo, Berlin, and Napoleon streets, as per act of purchase thereof filed with complainant's bill as Exhibit C; date of payment is May 5, 1866	4,166 65
Cash payment on property purchased from the New Orleans and Carrollton Railroad Company, in town of Carrollton, as per act of purchase thereof filed with complainant's bill as Exhibit E; date of payment is 29th June, 1866	8,666 66

333 SCHEDULE No. 2.

Filed with answer of the New Orleans and Carrollton Railroad Company and others, October 19, 1870.

Statement of receipts and expenditures of partnership between Beauregard, May, & Graham, from September 6, 1866, to May 11, 1867.

Cash balance of September 6, 1866			$2,099 24

RECEIPTS.

CAPITAL FURNISHED 1866. August 11, $3,474 90 Oct. 23.... 40,000 00 $43,474 90	From capital invested and contributed...	$43,474 90	
	Obtained upon checks of Beauregard, lessee, as stated in the answer, the amount of two credits and of $72,008 89	237,008 89	
	From earnings of the road	108,931 15	
	" sales of old rolling stock and old iron	8,590 88	
	" rent account of Carrollton Hotel	1,064 00	
	" sale of hotel buggy	68 40	
	" sale of horses	3,627 25	
	From cash payment on sale of property corner of Napoleon and St. Charles avenue to Mrs. Seelye, on February 19, 1867, (being the same property purchased from S. J. Peters, April 28, 1866)	5,000 00	
			407,765 47
	Total receipts from all sources		$409,864 71

EXPENDITURES.

Current working expenses		$101,691 39	
Lease rent from September 1, 1866, to April 30, 1867, paid monthly, viz:			
Seven and a half months, $1,666.66 per month	$12,499 95		
One-half of month of April, $1,708 33	854 16		
		13,354 11	
Purchase of office safe		625 00	
Donation Southern Hospital Association		200 00	
Purchase of horses and mules		19,891 00	
Purchase of cars and harness		78,002 27	
Premium on drafts for cars and iron		235 07	

Reconstructing railroad track, viz:			
Paid for lumber and cross-ties	23,154 99		
" railroad iron, curve rails, turntables, frogs, and switches	24,081 70		
" nails, spikes, and bolts	4,248 40		
" gravel, shells, sand, breeze and paving stones	6,943 88		
" Nicolson paving on Baronne and Jackson streets	1,835 00		
" labor, etc	37,594 80		
		97,858 77	
Construction of stable buildings, employees' boarding, house and car sheds, viz:			
Paid for lumber, weather-boarding, shingles, fence-pickets, sashes, and painting materials	24,376 92		
" bricks, granite blocks, sand, cement, and lime	5,119 64		
" gravel roofing of car sheds, etc.	2,212 70		
" plumber work and materials	1,436 34		
" nails, iron, hardware, well-pump, horse power and straw cutter	3,960 73		
" labor	29,180 21		
		66,286 54	
Cash furnished hotel to carry on business, also amounts expended liquidating hotel debts		6,086 78	
Paid balance due on purchase of hotel lease		4,000 00	
Paid auctioneer's charges (offering hotel for sale)		188 50	
Paid brokerage on sale of property to Mrs. Seelye		240 00	
Cash payment horse station property, purchased from New Orleans and Carrollton Railroad Company, December 17, 1866		8,666 66	
Paid May 3, 1867, the one year note on property purchased from S. A. Kohn		2,666 66⅔	
Paid May 8, 1867, the one year note on property purchased from W. C. Raymond		4,166 66⅔	
Paid interest on foregoing notes		546 66⅔	
Paid taxes and repairs on real estate, also notarial fees		725 31	
Total cash expended			$405,431 40
Of the expenses on preceding page the following are for real estate purchased for partnership:			
Cash payment on property purchased from New Orleans and Carrollton Railroad Company, square between St. Charles, Apollo, Felicity, and Polymnia streets, as per Exhibit F, filed with complainant's bill. Date of payment is December 17, 1866	$8,666 66		
Second payment on property purchased from S. A. Kohn, paid May 3, 1867, as per Exhibit D, filed with bill	2,666 66		
Second payment on property purchased from W. C. Raymond, paid May 8, 1867, as per Exhibit C, filed with bill	4,166 66		
Cash balance on hand May 11, 1867			$4,433 31

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SCHEDULE No. 3,

Filed with answer of the New Orleans and Carrollton Railroad Company and others, October 19, 1870.

Statement of debts of partnership at date of T. P. May's conveyance to the United States, and unpaid at date of act of fusion.

Four notes for $4,333.33 each, given for property purchased from New Orleans and Carrollton Railroad Company, per act filed as Exhibit F, and payable 20th December 1867, and 20th December, 1868, with 8 per cent. interest, all secured by vendor's lien and mortgage upon said property	$19,413 33⅓

One note for $4,166.66, given for square corner of Napoleon and St. Charles avenues, purchased from W. C. Raymond, per act filed with bill as Exhibit C, payable May 8, 1868, with 8 per cent. interest, secured by vendor's lien and mortgage upon said property		4,833 00½
One note given to Dr. Elliott, for mules, payable October 1, 1867, secured by vendor's lien and privilege	$3,100 30	
One note given to Dr. Elliott, for mules, payable October 27, 1867, secured by vendor's lien and privilege	4,680 00	
One note given to Dr. Elliott, for mules, payable December 31, 1867, secured by vendor's lien and privilege	3,145 45	
One note given to Dr. Elliott, for mules, payable January 27, 1868, secured by vendor's lien and privilege	4,770 00	
One note given to Dr. Elliott, for mules, payable July 26, 1867, secured by vendor's lien and privilege	4,632 30	
Due for thirty mules purchased from Dr. Elliott, May 21, 1867	6,750 00	
		27,078 05
Two notes for $8,666.66 each, given for hotel at Carrollton, purchased from New Orleans and Carrollton Railroad Company, per act filed with bill as Exhibit E, payable June 2, 1867, and June 2, 1868, with interest, secured by vendor's lien and mortgage upon said property		19,153 33
One note given for square of ground near Napoleon, purchased from S. A. Kohn, per act filed with bill as Exhibit D, payable May 2, 1868, with interest, secured by mortgage and vendor's lien upon said property		3,093 33⅓
Pay rolls for month August		9,987 35
P. Makinny, $10; Geddes & Shakespere, $34.87; Kearny, Blois & Co., $8.50		83 37
McDuff & Co., $5,556.74; A. Perry, $2; Stevens & Seymour, $41.30.		5,600 04
F. Manch, $10; Hill & Veazie, $6; Wheelock & Ball, $7.65; G. N. Morison, $5.31.		28 96
A. K. Aken, $9.60; Wheelock & Co., $167.52; Horter, Peterson & Fenner, $11.40		188 52
Office rent for August, $125; U. S. tax on August receipts, $44.920		574 20
John Armstrong, $48.75; Slocomb & Co, $58.99; Jackson Railroad Co., $288.75.		396 49
W. Smith, $16; Taylor & Co., $1,599.55; Kaufman & Co., $8.96		1,624 51
Railroad rent for last half of the month of August		854 17
New Orleans and Carrollton Railroad Company, $414.85; Page & Co., $362.37		777 22
Bridge & Son, $45; J. B. Slawson, $1,400; J. C. Davey, $1,199.40.		2,644 40
Picayune Saw Mill, $50.63; John Rooney, $1,000		1,050 03
New Orleans and Carrollton Railroad Company, amount of old rolling stock sold		20,345 24
		$117,725 80

335 *Answer of G. T. Beauregard to complainant's amended bill.—Filed October* 19, 1870.

U. S. circuit court.

CHARLES CASE, RECEIVER FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
GUSTAVE T. BEAUREGARD ET AL. } No.

The answer of Gustave T. Beauregard, one of the defendants herein, to the original and amended bill of complaint of Charles Case, receiver of the First National Bank of New Orleans.

This defendant, Gustave T. Beauregard, domiciled in New Orleans, now and at all times hereafter reserving to himself all manner of benefit and advantage to himself of the many errors and insufficiencies in said bill contained, for an answer thereto, or unto so much as this defendant is advised is material for him to make answer unto, says:

He admits that said Case is receiver of said bank.

He admits that on the 12th day of April, 1866, this defendant did lease from the New Orleans and Carrollton Railroad Company the railroad and other property appertaining thereto, as the same more fully appears by reference to the act of lease filed by complainant as Exhibit A, to which reference is made as part hereof. This defendant admits that the said lease was made in the name of himself, for the benefit of the partnership hereinafter referred to; that on the 18th of April, 1866, a contract was entered into by said T. P. May, Augustus C. Graham, and this defendant for the conducting of said railroad under said lease, by which this defendant was to manage said road at a salary of five thousand dollars per annum; to have no share of the profits made or losses or debts incurred in said enterprise until the reimbursement to said May and Graham of the capital stipulated in said act to be furnished by them, with interest thereon, as shown by said contract, copy whereof is filed by complainant as Exhibit B, to which reference is made as part hereof; and this defendant admits that, as restricted, modified and subject to the terms and stipulations thereof, said contract was a partnership, and under it the business thereof was conducted, the railroad remodelled, changed from steam to horse cars, and heavy outlays were incurred by said partnership.

This defendant admits the purchases set forth in complainant's bill, to wit, that from W. C. Raymond, May 5, 1866; that from Samuel A. Kohn; that from the New Orleans and Carrollton Railroad Company of date the 29th of June, 1866, and that from said company of date the 15th January, 1867, as appears from Exhibits C, D, E, and F, filed with complainant's bill, referred to as part hereof; he admits that said purchases were made for said partnership, and paid for with its funds; he further admits that by said lease said partnership was entitled
336 to the use of a square of ground corner of St. Charles street and Napoleon avenue, on which said partnership made valuable improvements, but he avers that by the terms of said lease said improvements were to revert to said company at the expiration of said lease, without costs to said lessor.

This defendant avers that said partnership kept but one bank account, that kept with said bank; that there was expended by said partnership, from and out of its own proper funds, prior to September 6, 1866, for the purchase of said lease, the improvement and alteration of said railroad, for the equipment and furnishing of stock and other necessary materials, for the purchase of the real property above described, for improvements on it, and for other purposes connected with said partnership business, a large amount of money, no portion of which funds were derived from said bank, and the bulk of said proper funds were deposited with and held by said bank and by it were disbursed to said partnership upon the checks of this defendant, as lessee, from time to time, as in the ordinary course of account between the bank and its customers, and a statement of the funds so expended and the objects of said expenditure is filed with the answer of his co-defendant, as schedule No. 1, to which reference is craved. This defendant further avers that, to facilitate said May and Graham in furnishing the money stipulated by said contract, and at their special instance and request, it was provided therein that this defendant, as lessee, should deposit the funds and keep the account of said partnership in said bank, which was done by this defendant as lessee, and this defendant was given to understand by said May and Graham, and did understand, that he, as lessee, could check upon said bank for the wants of said partnership

and that proper business arrangements would be made by them, said May and Graham, to the end that the necessary funds should be provided by them, and put to the credit of said lessee in said bank to meet the checks so drawn, and in this mode the stipulations in said contract relative to the furnishing of funds would be fulfilled by said May and Graham, through and by said business arrangements, to be by them effected, without any personal liability or obligation of this defendant for the money paid by said bank upon said checks. This defendant further avers that during the existence of said partnership this defendant only received his said salary, and the partnership made no profits. This defendant further avers that the stipulations in said act of partnership relative to the furnishing of said money requisite therefor, by said May and Graham, to the management of said road by this defendant, as lessee, for a fixed salary for his personal services, and in respect to the period when, according to said contract, his participation in the profits and liability for the debts of said partnership was to commence, and the actual pecuniary condition of said partnership was at all times well known to said bank through some of its executive and administrative officers; that save and except the understanding aforesaid, and the bare presentation and payment of said checks at the counter of the bank, no intercourse or negotiation of any kind or nature relative to said checks, or their payment, or of or concerning the same, ever took place between this defendant and the officers of said bank, or any of them.

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This defendant admits and avers that in the absence of any such negotiation or intercourse save as aforesaid, and with such knowledge on the part of said bank, there was obtained from said bank at various times subsequent to the 6th of September, 1866, for said partnership, upon the checks of this defendant as lessee, drawn by him in accordance with the aforesaid understanding, the sum of $72,008.89, being the balance of account shown by Exhibit G, filed with complainant's bill, and this defendant admits that no part of said balance has been paid.

Defendant avers that on the 14th September, 1866, said bank entered to the credit of this defendant, as lessee, the sum of $40,000, and on the 19th March, 1867, said bank entered to the credit of said lessee the sum of $125,000, and this defendant admits and avers that in the absence of any such negotiation or intercourse, save as aforesaid, and with such knowledge on the part of said bank, there was obtained under said circumstances from said bank at various times subsequent to said September 6, 1867, for said partnership, upon the checks drawn by this defendant as lessee, in accordance with the aforesaid understanding, the amount of the said two credits so entered by said bank to his credit. This defendant admits, and avers the fact to be, that a part of the money expended by said partnership in its business and for its purposes, that is, that part expended between the 6th September, 1866, and 11th May, 1867, consisted of the proper funds of said partnership, no portion of which was derived from said bank, and of the aforesaid $72,008.89 and of the amount of said two credits obtained from said bank in the mode and under the circumstances above stated and set forth, and a schedule showing that part extended by the said partnership between the 6th September, 1866, and 11th May, 1867, the sources from whence derived, and the objects of said expenditure, is filed with the answer of his co-defendants, marked No. 2, to which this defendant craves reference as part hereof; and this defendant denies that, except as stated and explained, any portion of the money expended by said partnership was obtained from said bank, and this defendant submits to the court the ques-

tion of indebtedness arising in the state of facts herein set forth, and whether they warrant the conclusions stated in complainant's bill; and he denies that he is or ever was indebted to the complainant or the bank he represents.

This defendant admits that said account G, embracing as it does, said two credits entered by said bank to the credit of this defendant as lessee, and the checks drawn in accordance with said understanding, and
338 paid by said bank under the circumstances herein stated, is the account opened by this defendant as lessee for said partnership. This defendant admits that said bank was incorporated and organized about the 28th November, 1864; that May and Graham were active and leading founders of said bank; that B. F. Flanders was elected president, and A. C. Graham as cashier; that said May was a prominent director; that said Graham was elected president of said bank on the 12th July, 1864, and continued so to act until 12th July, 1866, when he absented himself; that upon leaving T. P. May was chosen president; that Graham not again returning May was elected president on or about the 12th October, 1866; that he continued so to act till the 8th of April, 1867, when D. B. Forbes, the former vice-president, was elected president, and continued so to act until the bank was closed by proceedings of the Government of the United States; that said May at all times exercised an influence over said bank and its administration, which this defendant believes to have been leading.

This defendant further avers and admits the facts to be, and not otherwise, that while said May was acting as president of said bank, and owing to the checks drawn by this defendant, as lessee, under the aforesaid circumstances hereinbefore set forth, and owing to the fact, without any such negotiation or intercourse between said bank and this defendant as heretofore set forth, save as aforesaid, and with the aforesaid knowledge on the part of the bank herembefore set forth, it paid said checks; that owing to said causes and under such circumstances said account of said defendant, as lessee, with said bank did become and was overdrawn on the 15th September, 1866. This defendant admits the facts to be, and not otherwise, that on said date said May did hold a power of attorney from this defendant, authorizing him to issue promissory notes for the debts of his principal, and only for his principal debts; that holding such power said May did, on or about the 14th September, draw a promissory note in the name of this defendant, as lessee, payable to the First National Bank of New Orleans, on demand, for $40,000; this defendant admits, and avers the facts to be, that on said 15th September, 1866, without any agency of this defendant to procure the entry of the aforesaid credit of $40,000 in respect thereto, said bank did enter to the credit of this defendant, as lessee, the aforesaid credit of $40,000, and this defendant believes that it was by and through the action of said May in that behalf that said bank entered said credit; save as aforesaid this defendant cannot set forth as to his belief or otherwise whether said May caused said notes to be credited by said bank to said account, and this defendant, save as aforesaid, cannot state as to his belief or otherwise whether said note was drawn to settle said account nominally; and this defendant submits to the court whether, under the facts stated, said power authorized said May to draw said note, which he denies. This defendant believes it to be true that
339 no attempts to collect said note were made; that it remained in the bank's possession until the closing up thereof, is now in complainant's possession, and is annexed to his bill.

This defendant admits and avers that, owing to the checks drawn by

himself as lessee under the aforesaid understanding with said May and Graham, hereinbefore set forth, and that with the knowledge aforesaid on the part of said bank of the facts herein charged as in its knowledge, and without any negotiations or intercourse between this defendant and said bank, save as aforesaid, the bank paid such checks; that, owing to said causes, said account of this defendant as lessee became and was overdrawn on the 19th March, 1867. Defendant admits that on said date, said May, holding from said Graham a power of attorney which fully authorized him to draw the bill hereinafter spoken of, as appears from said power filed with this answer as Exhibit E, did draw a bill of exchange upon A. C. Graham for $125,000, payable forty five days after sight, in favor of said bank; this defendant further admits that on said 19th of March, 1867, said bank did enter to the credit of said account one hundred and twenty-five thousand dollars, and this defendant believes it to be true that it was by and through said May's action in that behalf that said bank entered said credit. This defendant believes it to be true that said bill, though delivered to said bank, was never stamped or forwarded for presentation or acceptance by said bank, but remained in its possession until it came into complainant's possession, and is annexed to his bill.

This defendant submits to the court whether, under the facts stated, said sums of $40,000 and $125,000 were taken from said bank by said May, in violation of his duty and in fraud, as in said bill alleged.

This defendant avers and maintains that, by the acts of sale, transfer and conveyance by Thomas P. May to the United States, of date the 14th May and 16th of May, 1867, passed before A. Hero, notary, filed with complainant's bill as Exhibits N and H, to which reference is craved, said United States acquired a perfect, legal and valid title to the property, the subject of and conveyed by said acts; that to said property Joseph Hernandez, Alexander Bonneval and George Binder acquired a perfect, legal and valid title by the acts of sale, assignment and conveyance, from said United States, of date the 21st of August, 1867, and 31st October, 1867, filed with complainant's bill as Exhibits I, J, and K, and to which reference is craved, and the New Orleans and Carrollton Railroad Company, by the acts of date the 15th of October, 1867, passed before S. Magner, notary, filed with complainant's bill as Exhibit L, and to which reference is craved, acquired a perfect, legal and valid title to all the property acquired by said partnership, embracing all the property acquired by the United States, and by said Hernandez, Bonneval and Binder, under the various acts afore-
340 said, and this defendant denies that the complainant or the bank he represents has any right, claim or demand, of any nature whatsoever, upon said property.

This defendant avers that, prior to the instituting of this suit, he had sold and parted with all the stock acquired by him under the terms of said act of 15th October, 1867, for a valuable consideration to him paid therefor by the purchasers thereof.

This defendant admits that John J. Knox, as agent of the Treasury Department, took possession of said bank, its assets, closed the same as an acting bank about the 13th of May, 1867. This defendant believes and admits that said Knox became aware of said account of this defendant, as lessee, of said balance; that said bank with the knowledge aforesaid of the facts charged herein to have been in its knowledge, and without any intercourse between said bank and this defendant, save as aforesaid, had paid upon his checks as lessee aforesaid the amount of said balance and of said credits, and said Knox also became aware

that said amounts had been used in the business of said partnership; save as aforesaid, and as hereinafter stated, this defendant cannot set forth as to his belief or otherwise whether said Knox or the United States had any knowledge of the dealings between said bank and said partnership.

This defendant avers that, besides said money obtained from said bank, a part of the capital of said partnership was furnished, he believes and avers that all of said capital furnished was the means of said May; that on the 16th of May, 1867, said Graham was indebted to said May in settlement of said partnership and of its accounts; that on said date said partnership was indebted in the sum of $117,725.88 to the parties named in the schedule annexed to co-defendant's answer, marked No. 3, to which reference is craved as part hereof, which indebtedness was secured by mortgages and privileges, and was still unpaid on the 15th of October, 1867, when said New Orleans and Carrollton Railroad Company acquired the property set forth in the act of that date, passed before S. Magner, notary; that said May became indebted to the United States, and was so indebted on said 16th of May, 1867, in the sum of $1,076,792.28, all of which was then due and owing, and for the payment of which said United States had a priority upon all his property; that owing to his said condition said May was unable to carry on said partnership; that on said date said May held a power of attorney from said Graham, authorizing him, said May, among other things:

"To sell and buy real estate, for such price and on such terms as in his discretion seemed fit; to dissolve any partnership in which said Graham was or might be a partner; to make any settlement, transaction, compromise or otherwise, of any concern or matter."

All of which more fully appears by reference to said power,
341 filed with this answer as Exhibit E, to which reference is craved.

This defendant further avers that on said 16th of May, 1867, said railroad was incomplete, for its completion and to carry out the enterprise of said partnership a large outlay of money was requisite, all its capital furnished and all its earnings had been consumed in its business; that by the terms thereof, said lease could not be transferred without the consent of this defendant and of said company.

Now this defendant admits and avers that under the state of facts relative to said partnership then existing, said May, acting for himself and as the agent of said Graham, and as set forth in the act, did on the 16th of May, 1867, sell, assign, convey and deliver to the United States the following property:

"All and singular the right, title, interest, share, property, claim and demand of every nature and kind whatsoever of them, the said Thomas P. May and Augustus Clason Graham, and of each of them, in and to the New Orleans and Carrollton Railroad, the lease and other franchises thereof, and the railroad tracks, rolling-stock, engines, cars, live stock and other appurtenances thereunto belonging, or in anywise appertaining, the same having been acquired by the said May and Graham by the provisions of certain articles of copartnership entered into between them and Gustave Toutant Beauregard for the purpose of conducting the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred and sixty-six."

As is more fully set forth in the act filed with complainant's bill as Exhibits H and N, to which reference is craved, for and in consideration of the price of $480,000 (four hundred and eighty thousand dollars), which, as agreed upon by said United States and said May, was to be

settled and liquidated by the granting of an acquit'ance and discharge by the United States to said T. P. May of so much of his said indebtedness to the United States, and of said price as said United States might receive from the sale of said property conveyed, that said consideration was settled and discharged by the United States, as stipulated in said act; that said United States did subsequently sell said property for two hundred and eighty thousand dollars, as is more fully set forth hereinafter. to which reference is craved, the said May declaring in said act of sale that though it would appear from the premises said Graham was a part owner of said property, yet in truth said May was the owner of the apparent interest of said Graham, all of which more fully appears by said act of conveyance, sale and transfer passed before A. Hero, notary, of said date, and the act of which it is confirmatory, passed before same notary of date the 14th May, 1867, filed as Exhibits H and N, to which reference is craved; that said United States was represented in said conveyance by said Knox, who was its duly authorized agent in the premises, with full power from said United States, through its proper official, to act in respect to and accept said conveyance for said United States.

342 This defendant avers that under the facts herein stated said May had authority from said Graham to make said conveyance, but whether it is deemed said May had, or had not, said authority from said Graham, this defendant insists and maintaims that under all the facts herein stated, and the law arising thereon, said May had the right to make said conveyance; that the same is legal and valid in all respects, and vested in the United States a perfect title to said property conveyed, and this defendant denies that the same is fraudulent, null and void, as alleged in complainant's bill.

This defendant avers and admits that the United States having acquired title to the property conveyed as aforesaid by said May to said United States by two acts, one dated 21st August, 1867, and one dated 31st October, 1867, sold, assigned, conveyed and delivered said property to said co-defendants, Joseph Hernandez, A. Bonneval and G. Binder, for the price and sum of $288,000, which by said purchase's was paid to said United States, as stipulated in said acts, which are filed with complainant's bill as Exhibits I, and J, and K, to which reference is craved; that through Wm. Bell, who executed on behalf of said United States said conveyance of date the 21st August, 1867, was fully authorized for and on behalf of said United States to make said conveyance for said price, and to enter into all the other stipulations in said act contained, except such of said stipulations as are omitted and differ from said two acts executed by the Solicitor of the Treasury of date the 31st October, 1867, filed with complainant's bill as Exhibits J and K, yet some of the stipulations contained in said act executed by Bell did not meet the approval of said Solicitor, and, therefore, said Solicitor executed said act of sale and transfer of said property and the other act relative thereto, both executed by said Solicitor of date 31st October, 1867, filed as Exhibits I, J, and K, with complainant's bill, to which reference is craved as part of this answer, under which said acts, and in accordance therewith, said co-defendants, J. Hernandez, A. Bonneval and G. Binder, paid said price of $288,000 to said United States, acquired and received delivery of the aforesaid property to them conveyed; that said Solicitor of the Treasury had full power under the law to execute said act.

This defendant further admits and avers that on the 15th October, 1867, by act passed before S. Magner, notary, between said Hernandez, Bonneval, Binder, the New Orleans and Carrollton Railroad Company,

and this defendant, the aforesaid lease was canceled and annulled, and all the property acquired by said partnership was conveyed, delivered to and acquired by the New Orleans and Carrollton Railroad Company, for and in consideration of $400,000 of the capital stock of the said company, say four thousand shares, which by said company were delivered to and received by this defendant, and Hernandez, Bonneval and Binder, under and in accordance with the terms of said act, by virtue
343 whereof said company received possession and delivery, acquired and is now vested with the title to the following property conveyed by said act, as appears by said act filed with complainant's bill as Exhibit L, to which reference is craved as part of this co-defendant's answer, to wit:

"All the railroad improvements, the tracks, horses, mules, or whatever other live stock, the cars, harness, rolling-stock, engines, and improvements acquired by, placed and put upon said road by said partnership, and appurtenances thereof; that certain square of ground described as No. sixty-six, in the city and parish of Jefferson, fully described in Exhibit D, filed with complainant's bill; that certain square of ground designated as No. sixty-five, in the city and parish of Jefferson, fully described in Exhibit C, filed with complainant's bill; that certain lot of ground in the town of Carrollton, parish of Jefferson, fully described in Exhibit E, filed with complainant's bill; several certain lots in the first district of this city, in square bounded by St. Charles, Felicity, Apollo, and Polymnia streets, fully described in Exhibit F, filed with complainant's bill, and other property, as is more fully shown by reference to said act of date 15th of October, 1867, embracing all property acquired by the United States, and by said Hernandez, Binder, and Bonneval, under the acts of sale, transfer, and assignment aforesaid."

This defendant denies that at or before the date of said conveyance from May to the United States he was possessed of no means; he avers, on the contrary, that at and before said date said May was possessed of large means and property; that said May had never applied for the benefit of the bankrupt law; this defendant admits that at and before said date said May was largely indebted; he believes that at the date referred to said May was and since has been insolvent, and this defendant believes that since said transfer by him said May has not been possessed of any means or property except such as is of inconsiderable value.

This defendant does not admit that said Graham was, at the time of said transfer of May, possessed of no means; he believes and avers that said Graham was then possessed of means and property; he admits that though possessed of said means and property, said Graham was, at and before said date, largely indebted; he believes and avers that said Graham is now possessed of means and property; that he has never applied for the benefit of the bankrupt law, and, save as aforesaid, this defendant cannot state as to his belief or otherwise whether said Graham is or was insolvent.

This defendant admits that at the date of said acts of 14th May, 1867, 16th May, 1867, 21st August, 1867, 31st October, 1867, and 15th October, 1867, he knew that with the aforesaid knowledge on the part of said bank charged in this answer, there had been obtained from said bank for said partnership, upon the checks of this defendant as lessee,
344 drawn by him in accordance with the aforesaid understanding between him and said May and Graham hereinbefore set forth, and paid by said bank without any negotiation or intercourse between the said bank and this defendant, the sum of $72,000, being the aforesaid balance, and

this defendant knew that no part of said balance, obtained under said circumstances, had been paid. This defendant further admits and avers that, at said dates last referred to, he then knew that with the aforesaid knowledge on the part of said bank of the facts charged in this answer to have been in its knowledge, there had been obtained from said bank for said partnership upon the checks of himself as lessee, drawn by him in accordance with the understanding between May, Graham, and himself hereinbefore set forth, and paid by said bank without any negotiation or intercourse between said bank and himself, save as aforesaid, the amount of the two credits aforesaid; and this defendant further admits he then knew the circumstances under which said credits were entered, as the same are set forth in this answer; and he admits he knew that said amounts obtained upon said checks had been used in the business of and for said partnership, and except as stated and explained herein, this defendant denies that he had any knowledge touching the business or relations between said bank and said partnership. This defendant further admits that at the date of said acts he believed the pecuniary condition of said May and Graham to be as he has set forth the condition of said May and Graham in this answer, and this defendant denies any other or further knowledge of their condition. This defendant denies that the sales and transfers of date the 14th of May, 1867, 16th May, 1867, 21st August, 1867, and 31st of October, 1867, set forth in this answer, were in fraud of the alleged rights of said bank, and he avers and maintains that said sales were legal and valid in all respects; and he denies that the property conveyed by said sales and transfers is liable in any manner whatever for the alleged debt claimed by complainant.

This defendant admits the execution of the writing purporting to be an assignment of the pretended rights of said Graham in and to the property of said partnership to the Fourth National Bank; he believes that at the execution thereof said Fourth National Bank had assumed liabilities for the First National Bank, but this defendant believes and avers that said liabilities have been satisfied by the moneys realized upon bills drawn by the First National Bank and other securities which were placed in the hands of said Fourth National Bank by said Graham to indemnify it against such liabilities, and this defendant believes that said writing was executed for the avowed purpose of securing said Fourth National Bank against said liabilities, but this defendant denies that by reason thereof said Fourth National Bank acquired any rights or claims whatever upon the property conveyed by said May to the United States, and that acquired by the New Orleans and Carrollton Railroad Company, by said act of date the 15th of October, 1867.

345 This defendant believes that William Bell, who was the agent of the United States and the Solicitor of the Treasury, knew on the 21st of August, 1867, and 31st of October, 1867, of said account of this defendant as lessee with said bank; of the aforesaid balance shown by it; of said credit of $40,000 entered by said bank in said account; of said note of $40,000; that by said May it had been delivered to and was held by said bank; that said balance and said credit had been in the mode, under the circumstances and in accordance with the understanding between said May, Graham, and this defendant hereinbefore set forth, obtained from said bank for said partnership and used in its business; save as aforesaid this defendant cannot set forth as to his belief or otherwise whether said United States had any knowledge whatever touching the business or relations between said First National Bank and said partnership, or as to the results thereof.

This defendant denies that at and before said date of said conveyance to the United States he was possessed of no means; he believes and avers he was always possessed of some means; he submits whether under the facts herein stated he ever was or is liable for the money obtained for said partnership from said bank, under the circumstances herein stated, and if decreed not liable, he is and always has been solvent; he avers that he is now possessed of some means and property, but admits the same is inconsiderable in proportion to the amount claimed by complainant.

This defendant believes the condition of said May as he has set it forth herein was on said 21st of August, 1867, and 31st October, 1867, known to said Solicitor, and to said Bell; save as aforesaid this defendant cannot state, as to his belief or otherwise, whether said United States had any knowledge whatever touching the pecuniary condition of said May, Graham, or this defendant.

And this defendant denies all other matter and things in said bill charged, material for him to make answer unto, and not herein sufficiently answered, avoided or denied, is true to his knowledge or belief. All of which this defendant is ready to aver and prove, and prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

G. T. BEAUREGARD.

L. E. SIMONDS, and
LEA, FINNEY & MILLER,
Solicitors.

G.T Beauregard, being duly sworn, deposes and says that all the matters and things in the foregoing answer contained, which are stated upon the personal knowledge of this affiant, are true and correct, and those stated upon the information of others he believes to be true.

G. T. BEAUREGARD.

Sworn to and subscribed before me October 19, 1870.

F. R. VINOT,
Deputy Clerk.

346 *Exhibit E annexed to answer of G. T. Beauregard.—Filed October, 1870.*

Know all men by these presents that I, Augustus C. Graham, of the city of , State of , do hereby nominate, constitute, and appoint Thomas P. May, of the city of New Orleans, State of Louisiana, to be my true and lawful attorney for me, and in my name and behalf, and in my place and stead, to transact all business and concerns of whatever kind, nature, or description soever the same may be in which I now have or may hereafter have any interest, whether it be with individuals, partnerships, or with corporate bodies; and for me, and in my name and behalf, and in my place and stead, to do and perform all the acts and things which may become requisite and necessary, or be convenient and useful for and in the transaction of any such business or concerns, as fully as I myself could do if I were present; and to that end I now specially authorize and empower him, the said Thomas P. May, to pledge, sell, and transfer any stock standing, or which may hereafter stand, in my name on the books of any corporate body; to receive and receipt for any dividends that may be declared on the same; to deposit money in banks and draw checks in my name; to draw, endorse, and accept bills of exchange, and draw and endorse promissory

notes; to endorse in my name and lodge promissory notes and bills of exchange for collection, and to withdrew the same at discretion; to borrow money and contract obligations with banks or other corporate bodies, partnerships, or individuals, whether on promissory notes or obligations drawn in my or his own favor, or drawn in favor of any other person or persons, partnerships or corporate bodies, without limits as to amount, and from time to time to sign for the renewal of any part reloaned; to receive and acknowledge notices of protests of all or any bills of exchange, drafts or promissory notes; to sell and buy real estate for me and in my name for such prices and on such terms and conditions as my said attorney may, in his discretion, think fit; to dissolve any partnership in which I am or may hereafter be a partner; to make any settlement by transaction, compromise or otherwise of any business concern or matter in which I am now or may hereafter have any interest, and to do and perform all acts and to sign and execute all instruments in writing which may be requisite and necessary to carry into effect the said powers.

And I hereby promise and bind myself to ratify and confirm all the acts done and performed by the said Thomas P. May, for me and in my name, under and in virtue of the said powers herein conferred and given; and to hold the same to be as binding and valid as though the same had been done, performed, and executed by myself in my own proper person.

347 In witness whereof I have hereunto set my hand and seal, in the city of New York, on this the twenty-ninth day of September, 1866.

(Signed) A. C. GRAHAM. [SEAL.]

In presence of—
(Signed) GEORGE CHALMERS.

CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty ninth day of September, A. D. 1866, before me personally appeared Augustus C. Graham, to me known to be the individual described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

I certify the foregoing to be a true and correct copy of the original power of attorney annexed for reference to an act of agreement between Augustus C. Graham and Charles Hodges passed before me, notary, on the twenty-third day of October, eighteen hundred and sixty-six.

New Orleans, January 9th, 1869.

T. O. STARK,
Notary Public.

Interpleader of United States.—Filed October 26, 1870.

U. S. circuit court. In equity.

CHAS. CASE, RECEIVER,
vs.
G. T. BEAUREGARD AND ALS. } No. 5931.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

The attorney of the United States, Alanson B. Long, makes known o the court that the United States have, to a certain extent, warranted

titles to certain property described in the bill to defendants Bonneval, Hernandez, and Binder, and would join in the defense of the same.

Wherefore the said U. S. attorney, acting under direction of the Solicitor of the Treasury, of the date of the 18th of May, 1870, asks of this court to be allowed to appear for the United States and take part with the counsel for the said defendants in defending them against the suit of the complainant, and to that end to examine witnesses, take orders, and do any and all such other measures as to such defense may be just and proper, adopting all relevant portions of the answer herein filed by said Bonneval, Hernandez, and Binder on the 19th day of October, 1870.

ALANSON B. LONG,
U. S. Attorney.

We consent that this interpleader be filed, and order issue upon the sitting of court.

J. D. ROUSE,
Sol'r for Complainant.
LEA, FINNEY & MILLER,
Attorneys.
ELMORE & KING.

348 *Entry at November rules*, 1870.—*Extract from chancery order book, Monday, November 7th*, 1870.

CHAS. CASE, RECEIVER,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The complainant herein, by his solicitor, J. D. Rouse, has this day filed his replication to the answers of Gustave T. Beauregard and other defendants.

Replication of complainant to answer of the defendants, G. T. Beauregard, the N. O. & C. R. R. Co., Hernandez, Bonneval, and Binder.—Filed November 7, 1870.

In the U. S. circuit court, fifth circuit, and district of Louisiana. In equity.

CHAS. CASE, RECEIVER FIRST NATIONAL BANK of New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The replication of Charles Case, receiver of the First National Bank of New Orleans, complainant, to the answers of Gustave T. Beauregard, Joseph Hernandez, Alexander Bonneval, George Binder, and the New Orleans and Carrollton Railroad Company.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and unsufficiencies of the answers of said defendants, for replication thereunto, saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and hat the answers are very uncertain, evasive, and insufficient in the law to be replied unto

by the repliant, without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and herein, and hereby, well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

J. D. ROUSE,
Solicitor.

349 *Alias subpœna in chancery, on amended bill to Thos. P. May.—Issued November 9, 1870.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded, as you have heretofore been, to summon Thomas P. May, individually and as member of the firm of G. T. Beauregard, T. P. May, and A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of December, 1870, then and there to answer an amended bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with
350 your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 9th day of November, in the year of our Lord one thousand eight hundred and seventy, and the 95th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of November, 1870, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

Received November 9, 1870, by the U. S. marshal, and on the 15th day same month and year served a copy of the within subpœna in chancery on the within-named Thomas P. May, by delivering the
351 same to him in person, in the custom-house building in this city.

New Orleans, Nov. 15th, 1870.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

Agreement to print record.—Filed December 17, 1870.

U. S. circuit court, district of Louisiana. In chancery.

CHAS. CASE, RECEIVER FIRST NATIONAL Bank of New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

In the above-entitled cause it is hereby agreed between the parties complainant and respondents, by their respective solicitors, that the record, including files, exhibits and testimony taken, or to be taken, shall be printed for the use of the court, the parties and their respective solicitors, and when so printed the same may be bound in cheap form, and when so printed and bound the cost and expense of such printing and binding shall be taxable costs of the cause to be taxed against and paid by the losing party or parties in the case.

L. E. SIMONDS,
Solicitor N. O. & C. R. R. Co. and of G. T. Beauregard.
LEA, FINNEY & MILLER,
For Hernandez, Binder, Bonneval and the Co.
J. D. ROUSE,
For Complainant.

Order to withdraw record.—Entered and filed December 17, 1870.

In chancery.

CHAS. CASE, RECEIVER, &C., *vs.* G. T. BEAUREGARD & OTHERS. } No. 5931.

On motion to the court, and by consent of parties complainants and respondents, it is ordered, that the complaint have leave to withdraw the papers on file in this cause, for the purpose of having
352 the same printed, pursuant to the agreement of said parties.

Motion and order for further time to take testimony.—Entered and filed February 4th, 1871.

U. S. circuit court, dist. of La. In chancery.

CHAS. CASE, RECEIVER FIRST NATIONAL Bank, N. O., *vs.* G. T. BEAUREGARD ET AL.

On motion to the court by J. D. Rouse, solicitor for complainant, and by Messrs. Lea, Finney & Miller, solicitors for defendants, as appears of record, and upon showing that further time is necessary for the taking of testimony in the above cause, it is ordered, that the time for taking testimony in said cause be extended to all parties until the tenth day of March next, up to and including which day said parties may take and file testimony.

Entry at March rules, 1871.—*Extract from chancery order book, Monday, March 6th*, 1871.

CHAS. CASE, RECEIVER FIRST NATIONAL Bank of N. O.
vs.
G. T. BEAUREGARD & AL. } No. 5931.

353 Thomas P. May, one of the defendants herein, having failed & neglected to appear, plead, answer, or demur to complainant's amended bill of complaint, though duly served with process of subpœna, and the usual delay allowed him by law therefor having expired, at the suggestion of J. D. Rouse, complainant's solicitor, it is ordered that said amended bill of complaint be and is hereby taken pro confesso against said defendant Thomas P. May, to the end that such decree may be made thereupon as shall be just, &c.

Motion and order to issue commission.—Extract from the minutes. November term, 1870.

NEW ORLEANS,
Friday, March 24th, 1871.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, presiding judge.

CHAS. CASE, RECEIVER,
vs.
BEAUREGARD & AL. } No. 5931.

On motion of J. D. Rouse, solicitor for the complainant, and upon suggesting that the complainant desires to examine Augustus C.
354 Graham, one of said defendants who has not been served with process of subpœna, & who resides in New York, and also Sterne Chittenden, a witness for complainant, residing in New York, it is ordered that a commission issue to William S. Opdyke, or to Charles Z. Middlebrook, or to B. F. Lee, jr., or to Moses B. Maclay, of the city and State of New York, to take the testimony of said Graham and said Chittenden upon the interrogatories and cross-interrogatories now filed.

Interrogatories and cross interrogatories.—Filed March 24th, 1871.

U. S. circuit court, fifth circuit and district of Louisiana.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL Bank of New Orleans,
vs.
G. T. BEAUREGARD & ALS. } No. 5931.

Interrogatories propounded to Augustus C. Graham, one of the said defendants, and Sterne Chittenden, witness, both residing in
355 the city and State of New York, whose testimony is to be taken in this suit, by virtue of the order and commission issued herein, in behalf of the complainant.

Interrogatories to be propounded to Augustus C. Graham.

First. Were you interested with Thomas P. May and G. T. Beaure

gard in the lease of the New Orleans and Carrollton Railroad? If yea, state what that interest was, whether or not you paid any moneys entitling you to such interest, and how much money you so paid and to whom you paid it.

Second. Was the assignment made by you of your interest in said partnership on the 8th of May, 1867, to the Fourth National Bank of New York, in fact, absolute or conditional?

What was the object of said assignment?

Third. Were you indebted to the First National Bank of New Orleans the 13th day of May, 1867? If so, to what amount, and had you means to pay the same?

Interrogatories to be propounded to Sterne Chittenden.

356 First. Are you acquainted with Augustus C. Graham? If yea, how long have you known him?

Second. Do you know what his financial condition was on the 13th or 14th May, 1857—whether he was then solvent or insolvent? And, if you have such knowledge, state the particulars thereof, and how you acquired it.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

Cross-interrogatories:

Defendants, reserving all legal objections to the interrogatories to and the testimony of A. C. Graham thereby elicited, propound the following:

1st. What was your business prior to your coming to New Orleans and prior to 1867? Were you a principal or a clerk or agent in said business? If a principal, what was your capital, from whence derived? If a clerk or agent, what was your salary or compensation? How long had you been engaged in business, either as principal, clerk, or agent, prior to your coming to New Orleans and prior to 1867? Had you
357 not failed in business prior to coming to New Orleans? What year did you come to New Orleans? Have you not failed in business? When did you fail, and where?

2d. What was your occupation while you were an officer or connected with the 1st National Bank? Were you engaged in any business? If yea, what business or occupation, where was it carried on, what was its nature, and what was its result? Did you fail in said business?

Third. If you say you paid any money for any interest in the lease of the New Orleans and Carrollton Railroad Company, state the dates of such payments and the amount paid by you? How were such payments made, by checks or money? Where did you derive the money with which you made such payments? If you say you earned the money in any business state what business, when and where you made or earned said money? If you say you inherited said money state from whom you inherited said money. If you say you made said money in speculations, state what speculations, when, where, and with whom carried on
358 and the result thereof. If you say you paid any money for an interest in said lease, state whether you earned said money or inherited it, or borrowed it, or how you got it.

4th. Had you any pecuniary accounts or relations with Thomas P. May? State what were such accounts or relations, state from what business or connection or speculations the said accounts or relations

originated? Enumerate each piece of business you ever had with May from or out of which originated any pecuniary accounts or relations you may say you ever had with him.

5th. Did you place in the hands of the Fourth National Bank of New York any property or securities or effects? What is the value thereof? What amount has said bank received on said securities or for said securities or effects? Was there any indebtedness due by you to said bank when said securities or effects were placed in its hands? Is there any indebtedness now due by you to said bank? What is said indebtedness?

(Signed) LEA, FINNEY AND MILLER,
Attorneys for Defendants,
Binder, Bonneval, Hernandez, and Company.

359 TO S. CHITTENDEN:

State your means of knowledge of each and every fact stated by you?

(Signed) LEA, FINNEY & MILLER,
Att'ys.

Cross-interrogatories to A. C. Graham on behalf of G. T. Beauregard.

1st. Have you not an unsettled account with Thomas P. May? And of how long standing is such account? Has not such account been so standing and unsettled at least since May, 1867.

2d. Have you sued Thomas P. May on such account?

(Signed) L. E. SIMONDS,
Solicitor.

No cross interrogatories to Chittenden.

(Signed) L. E. SIMONDS,
Solicitor of G. T. Beauregard.

No cross-interrogatories.

(Signed) ELMORE & KING,
Attorneys for 4th N. B.

(Signed) J. R. BECKWITH,
U. S. Att'y.

CLERK'S OFFICE.

True copies of the originals on file.
New Orleans, March 24th, 1871.

(Signed) D. URBAN, *Clerk.*
360 By F. B. VINOT, *D'y C'l'k.*

Commission of complainant.—Issued March 25th, 1871, *and returned and filed May 29th*, 1871.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To William S. Opdyke, or to Charles L. Middlebrook, or to B. F. Lee, jr., or to Moses B. Maclay, of the city and State of New York:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Augustus C. Graham and Sterne Chittenden,

witnesses for the complainant, and them duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court, wherein Charles Case, receiver of the First National Bank of New Orleans, is plaintiff,
361 and G. T. Beauregard and others are defendants, and the same examination so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 25th day of March, anno Domini 1871, and the 95th year of the Independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

STATE OF NEW YORK,
City & County of New York, ss:

MAY 20, A. D. 1875.

The execution of this commission appears in a certain schedule hereto annexed.

Witness my hand and seal.

[SEAL.] (Signed) MOSES B. MACLAY,
Commissioner.

Deposition of Sterne Chittenden, annexed to foregoing commission.

Deposition of Sterne Chittenden, a witness produced, examined
362 and sworn before me, Moses B. Maclay, the commissioner named in the annexed commission (and a commissioner of the State of Louisiana, in the city of New York, to take depositions), on this 20th day of May, A. D. 1871, at my office, number 2 Nassau street, corner of Wall street, in the said city, to be read in evidence in a certain suit now pending in the circuit court of the United States for the fifth judicial circuit, Louisiana, wherein Charles Case, receiver of the First National Bank of New Orleans, is plaintiff, and G. T. Beauregard and others are defendants.

The said STERNE CHITTENDEN having been by me first duly examined & sworn to testify the truth, the whole truth, and nothing but the truth, according to law, deposed and said as follows:

First. To the first direct interrogatory he answers: I am and have been acquainted with A. C. Graham for about three and a half years.

Second. To the second direct interrogatory he answers: As an attorney at law, employed in the prosecution of actions, first against
363 the Fourth National Bank of the City of New York, to which A. C. Graham had, about the middle of May, 1867, made an assignment of certain assets & property, & also against him. I acquired, I think, quite thorough knowledge of what had been and was, from about the middle of May, 1867, through that year, the financial condition of A. C. Graham. By his assignment of property to the Government of the United States and to the Fourth National Bank of the city of New York, he claimed to have been utterly divested of property, and I have no doubt that he was insolvent on the 13th of May, 1867.

The claim of the receiver of the First National Bank of New Orleans,

for whom I acted as attorney as aforesaid, was a large one, and by examination, under judicial order, of said Graham, and by very careful inquiry among those who knew him better than I did, even to the extent, if I remember rightly, of asking a sworn statement from one of them, I concluded him to be, and from the middle of May as aforesaid, if not before, to have been hopelessly insolvent, and acted accord-
364 ingly where it would have been largely to my interest to have proved him otherwise, and so I assert him to have been insolvent May 13, 1867.

After the three years or thereabouts intervening, although not having lost sight of his condition, I do not change that conclusion.

(Signed) STERNE CHITTENDEN.

Cross-interrogatories:

To the cross-interrogatories he answers and says:

In my employment to prosecute claims, mentioned in my examination-in-chief, I encountered the account of the Fourth National Bank against A. C. Graham and the First National Bank of New Orleans, and so a statement of his dealings with both said banks, and came in contact with the cashier and president of the former, and with the father, the cousin, the brother, and the wife of A. C. Graham, (and with James T. Bradley as his counsel,) at his house, and at the fourth National Bank, as well as at court.

Among these persons and at these places I endeavored to arrive
365 at the truth. Papers which related to middle of May, 1867, and tended strongly to exhibit the condition of A. C. Graham on and after May 13 or 14, 1867, and afterwards were quite freely exhibited to me and seem to me properly described as means of knowledge.

(Signed) STERNE CHITTENDEN.

Taken, subscribed and sworn to this 20th day of May, A, D. 1877, before me in the city of New York.

[SEAL.] (Signed) MOSES B. MACLAY,
Commissioner named in annexed commission, and Commissioner of Louisiana in the City of New York to take Depositions.

Rule and grounds.—Entered, filed and issued March 25th, 1871.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, A. D. 1871.

NEW ORLEANS, *Saturday, 25th day of March*, 1871.

Court met pursuant to adjournment.

Present, the honorable W. B. Woods, presiding judge.
" the honorable E. H. Durell, district judge.

CHA'S CASE, RECEIVER 1ST NATIONAL B'K of N. O.
vs.
G. T. BEAUREGARD & ALS. } No. 5931.

On motion of Lea, Finney & Miller, solicitors for defendants, the New Orleans & Carrollton Railroad Company, Joseph Hernandez, Alexander

Bonneval, and G. W. Binder, and upon exhibiting the supplemental and amended answer of said defendants, hereto attached, sug-
366 gesting that said answer has been exhibited to complainant, the allegations in said amended answer are material and important to these defendants, are not made for purposes of vexation or delay, nor calculated to produce any delay in this cause, it is ordered that complainant show cause, on Thursday, the 30th instant, at 11 a. m., why the original answer should not be amended by the facts and defences in said supplement answer and why the same should not be filed accordingly.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 25th day of March, 1871.

[SEAL] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

Received by the U. S. marshal March 27th, 1871, and on the same day, month, and year, served a copy of the within rule & grounds, by delivering the same to Frank Case, clerk, at 36 Natchez street, in this city.

New Orleans, March 27th, 1871.

(Signed) S. W. REID,
D'y U. S. Marshal.

Motion and order and affidavit for Commission.—Filed March 29th, 1871.

U. S. circuit court.

CHARLES CASE, RECEIVER,
vs.
THE NEW ORLEANS AND CARROLLTON R. R. Co. & als. } No. 5931.

On motion of Lea, Finney & Miller, of counsel for defendants,
367 and on exhibiting the annexed affidavit and interrogatories made a part of this motion, it is ordered by the court that a commission issue to Charles Wallack or Randolph Coyle, residing in Washington City, D. C., to take the testimony of the Secretary of the Treasury, the Register, the Comptroller of the Treasury, John Jay Knox, and other witnesses for defendants, residing in Washington City and that days be allowed for the examination and return of this commission.

Affidavit.

G. T. Beauregard, Joseph Hernandez, Alexander Bonneval and George Binder, being duly sworn, depose and say, that the testimony of the witnesses named in the foregoing motion is necessary and material for their defense.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
" J. HERNANDEZ.
" ALEX. BONNEVAL.
" G. W. BINDER.

Sworn to & subscribed before me this 29th day of March, 1871.

(Signed) F. B. VINOT,
D'y Clk.

368 *Interrogatories and cross-interrogatories. Filed March 29, 1871.*

U. S. circuit court.

CHARLES CASE, RECEIVER, &C., *vs.* THE NEW ORLEANS AND CARROLLTON RAILroad Company & als. } No. 5931.

Interrogatories to be proposed to the Secretary of the Treasury, the Register, the Comptroller of the Treasury, John Jay Knox, and other witnesses for defendants, residing in Washington City, to be examined under the annexed commission.

1. What is your official position?

2. Have you any knowledge of a check drawn by Thomas P. May upon the 1st National Bank of New Orleans, having been given on or about the 14th May, 1867, to the United States or to an officer or agent of the United States? If yea, state when, where, to whom and by whom said check was given, and state its date and amount. In whose possession or custody is said check now? Annex it if in your pos-
269 session or custody; if you cannot annex it, state the reason. Annex a copy. Whose signature as drawer thereof does such check bear? How do you know said signature? Who is now holder and owner of such check?

3. If you say said United States is the holder and owner of said check, state how it acquired the same and from whom? Did the United States acquire the same for or by reason of any consideration? If yea, state such consideration fully and particularly.

4. State any thing further you may know of service to defendants.

(Signed) LEA, FINNEY & MILLER,
Solicitors.

Cross interrogatories to be propounded to such witnesses as shall be examined upon the above and foregoing interrogatories:

1. If in answer to the 2d of foregoing interrogatories you say you have knowledge of the check therein inquired of, state to whose order the same is drawn, and state whether or not the sum of ninety-four thousand dollars is credited thereon, or what credit, if any, is endorsed thereon, or should be endorsed thereon or applied in re-
370 duction of said check.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, March 29th, 1871.
(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Commission for defendants.—Issued March 29, 1871.—Returned and filed April 17th, 1871.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To Charles Wallack or Randolph Coyle, residing at Washington, D. C.:

Know ye that, reposing special trust and confidence in your integ-

rity and ability, we hereby authorize and require you that you call and cause to come before you the Secretary of the Treasury, the Register, the Comptroller of the Treasury, John Jay Knox, and others, witnesses for defendants, and them duly examine on the annexed interrogatories,
371 on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Charles Case, receiver of the First National Bank, is plaintiff, and G. T. Beauregard and others are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 29th day of March, anno Domini 1871, and the 95th year of the Independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clk.*

I, Randolph Coyle, commissioner named in the within commission do hereby certify that I have taken the annexed depositions of Robert W. Taylor, John Jay Knox, Geo. S. Boutwell, and John Allison, which I hereby transmit to the circuit court of the United States for the district of Louisiana, together with the said commission, in obedi-
372 ence to the terms thereof.

Witness my hand and seal at the city of Washington this thirteenth day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE,
Comm'r.

Deposition of Robert W. Taylor, annexed to foregoing commission.

Circuit court of the United States for the district of Louisiana.

CHAS. CASE, RECEIVER OF THE FIRST NATIONAL BANK, pl'ff,
vs.
G. T. BEAUREGARD & OTHERS, DEFT'S. } No. 5931.

The deposition of Robert W. Taylor, taken by me, Randolph Coyle, of the city of Washington, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, at the Treasury Department of the United States, in the city of Washington, D. C., on the tenth day of April, A. D. 1871, and intended to be read in evidence in the above-entitled cause.

373 The said ROBERT W. TAYLOR being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the 1st interrogatory: My name is Robert W. Taylor, and I am First Comptroller of the Treasury of the United States.

To the 2nd interrogatory: I have no knowledge of such a draft, though it is possible I may have seen or heard of it. This office has no direct official connection with the draft, or its possession, or custody; hence I cannot annex it or a copy thereof. I do not know in whose possession or custody such draft now is.

To the 3d interrogatory: My answer to the preceding interrogatory renders an answer to this one unnecessary.

To the 4th interrogatory: I know nothing further of the matter.

Cross-interrogatories:

To the 1st cross interrogatory: My answer to the interrogatories in chief render unnecessary any answer to this cross-interrogatory.

374 (Signed) R. W. TAYLOR.

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I, Randolph Coyle, commissioner, do hereby certify that by virtue o a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, I caused the above named Robert W. Taylor, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned; that said deponent was by me carefully examined, cautioned, and sworn, according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me in the presence of said deponent, and was carefully read by deponent before being signed by him, and deponent then and there in my presence subscribed the same; and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this tenth day of April, 1871.

375 [SEAL.] (Signed) RANDOLPH COYLE,
Comm'r.

Deposition of John Jay Knox, annexed to foregoing commission.

The deposition of John Jay Knox, taken by me, Randolph Coyle, of the city of Washington, D. C., under authority of a commission issuing out of the circuit court of the the United States for the district of Louisiana, under date March 29th, 1871, at the Treasury Department of the United States, in the city of Washington, D. C., on the 11th day of April, A. D. 1871, and intended to be read in evidence in the above entitled cause.

The said JOHN JAY KNOX, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the 1st interrogatory: Deputy Comptroller of the Currency.

To the 2d interrogatory: I have knowledge that a check drawn by Thos. P. May upon the First National Bank of New Orleans

376 was given to me, acting as Assistant Treasurer of the United States, on the 13th day of May, 1867, said check being for the sum of three hundred and fifteen thousand seven hundred and seventy-nine dollars and ten cents ($315,779\frac{10}{100}$). The said check was dated e'ther the 12th or 13th of May, 1867, and was given to me by the district attorney of the United States at New Orleans, Sam'l H. Torrey, esqr., who obtained it at my request. I delivered the check to William Bell, esq., special agent of the Treasury Department at New Orleans, but do not know positively in whose possession the check now is. It is not in my possession or custody, and hence I cannot annex it nor a copy thereof. The check bore the name of Thomas P. May as drawer, of the genuineness of which I am satisfied from May's own admission to me in

conversation subsequently to the check's coming into my possession. The United States is the present holder and owner of said check.

To the 3d interrogatory: The manner in which the United States acquired possession of the said check is stated in my answer to the
377 preceding interrogatory. The United States obtained such possession and ownership for a valuable consideration arising out of the following state of facts, viz:

On the 11th day of May, 1867, upon examination of the books and money in the office of the assistant treasurer of the United States at New Orleans, a deficit of ten hundred and forty-nine thousand two hundred and twenty-one and forty-nine one-hundredth' dollars ($1,049,221\frac{49}{100}$) was found. At this time William R. Whitaker was the assistant treasurer, Tho's P. May had preceded him in that office, and he in terms acknowledged his obligations to the United States for the amount of this defalcation, admitting to me that he had obtained public moneys of the United States from his successor in office, knowing them to be such, and used them for his private ends, and in addition that he had after his retirement from the office of assistant treasurer delivered to his successor certain drafts of T. P. May & Co., on Oakes Ames of Boston, amounting to three hundred and sixty thousand dollars ($360,000.00), and of T. P. May on A. C. Graham, of New York, amounting to six hundred
378 thousand dollars ($600,000.00), which drafts was taken and counted as cash by said successor but were all protested for non-payment, thereby involving the United States in heavy loss. To meet as far as possible his liability to the United States, May turned over to me as the agent of the United States certain assets, among others the check in question.

To the 4th interrogatory: I have nothing to say in answer to this interrogatory.

Cross-interrogatories:

To the 1st cross interrogatory: The check in question was drawn to the order of Thomas P. May. There is not a credit thereon of ninety-four thousand dollars ($94,000.00), but there is an endorsement of ten thousand three hundred and seventy-eight $\frac{38}{100}$ dollars ($10,378.38). Sixty-seven thousand dollars ($67,000.00) in currency and twenty thousand dollars ($20,000 00) in gold were transferred from the First National Bank to the subtreasury of the United States in New Orleans, and applied to reduction of the indebtedness of May to the United States as follows, viz: Sixty-seven thousand ($67,000.00) currency and a
379 sufficient amount of the gold at the then current premium of thirty-five (35) per centum to make a total amount of eighty thousand (80,000.00) currency was applied in payment of a check of T. P. May upon the First National Bank, dated February 15, 1867, which check was found among the assets of the assistant treasurer at New Orleans.

The balance of the twenty thousand dollars ($20,000.00) gold remaining was applied and should be applied in reduction of the check of three hundred and fifteen thousand seven hundred and seventy-nine dollars and ten cents ($315,779.10) which has been hereinbefore referred to.

(Signed) JOHN JAY KNOX.

I, Randolph Coyle, commissioner, do hereby certify that by virtue of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, I caused the above named John Jay Knox, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned; that said

deponent was by me carefully examined, cautioned & sworn, according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me
380 in the presence of said deponent, and was carefully read by deponent before being signed by him, and deponent then and there in my presence subscribed the same; and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this eleventh day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE,
Comm'r.

Deposition of George S. Boutwell, annexed to commission.

The deposition of George S. Boutwell, taken by me, Randolph Coyle, of the city of Washington, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, at the Treasury Department of the United States, in the city of Washington, D. C., on the 11th day of April, A. D. 1871, and intended to be read in evidence in the above-entitled cause.

The said GEORGE S. BOUTWELL, being by me first duly cautioned
381 and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the 1st interrogatory: Deponent is Secretary of the Treasury of the United States.

To the 2d interrogatory: He has no personal knowledge of a check drawn by Thomas P. May upon the First National Bank of New Orleans having been given on or about the 14th day of May, 1867, to the United States or to an officer or agent of the United States, and further says that he has not instituted any examination in the Treasury Department for the purpose of ascertaining whether or not such a check may have been given or for the purpose of ascertaining any fact in relation to the same.

To the 3d and 4th interrogatories: That he has no personal knowledge of the matters enquired of in said interrogatories.

(Signed) GEO. S. BOUTWELL.

I, Randolph Coyle, commissioner, do hereby certify that by virtue of a commission issuing out of the circuit court of the United States
382 for the district of Louisiana, under date March 29, 1871, I caused the above named Geo. S. Boutwell, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned; that said deponent was by me carefully examined, cautioned, and sworn according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me in the presence of said deponent, and was carefully read by deponent before being signed by him, and deponent then and there in my presence subscribed the same; and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this eleventh day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE,
Comm'r.

Deposition of John Allison, annexed to commission.

383 The deposition of John Allison, taken by me, Randolph Coyle, of Washington City, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29, 1871, at the Treasury Department of the United States, at the city of Washington, D. C., on the twelfth day of April, A. D. 1871, and intended to be read in evidence in the above entitled cause.

The said JOHN ALLISON, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the 1st interrogatory: I am Register of the Treasury of the United States.

To the 2d interrogatory: I have no direct personal or official knowledge of such a check as is enquired of. The check is not in my custody or possession, and hence I cannot annex it nor a copy. I do not know in whose possession it is.

To the 3d and 4th interrogatories: My answer to the 2d inter-
384 rogatory renders any answer to this interrogatory unnecessary.

Cross-interrogatories:

To the 1st cross-interrogatory: My answer to the direct interrogatories render unnecessary any answer to this cross-interrogatory.

(Signed) JOHN ALLISON.

I, Randolph Coyle, do hereby certify that by virtue of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, I caused the above named John Allison, deponent in the aforesaid deposition, to come before me at the time and place in the caption mentioned; that said deponent was by me carefully examined, cautioned, and sworn according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me in the presence of said deponent, and was carefully read by deponent before being signed by him, and deponent then and there in my presence subscribed the
385 same; and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this twelfth day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE,
Comm'r.

Order rule made absolute.—Extract from the minutes of March 30th, 1871.

CHAS. CASE, REC'R,
vs.
N. O. & C. R. R. CO. & ALS. } No. 5931.

The motion made by defendants on the 25th inst. was called up, Lea,

Finney & Miller for defts., Case & Rouse for complainant; when, after hearing argument it is ordered by the court that the application be granted and that the supplemental and amended answer be filed as prayed for.

Supplemental and amended answer of the New Orleans & Carrollton Railroad Company.—Filed March 30th, 1871.

U. S. circuit court.

CHAS. CASE, RECEIVER OF THE FIRST NAT'L Bank,
vs.
NEW ORLEANS & CARROLLTON RAILROAD CO. & others.
} No. .

386 The supplemental and amended answer of the New Orleans and Carrollton Railroad Company, a corporation established by law, domiciled in New Orleans, and Joseph Hernandez, Alexander Bonneval, and George Binder, defendants herein, *ses*:

These defendants aver that on the 14th May, 1867, the First National Bank, of New Orleans was indebted to Thomas P. May in the sum of three hundred and fifteen thousand seven hundred and seventy-nine dollars, being a balance of the account of said Thomas P. May with said bank, arising from deposits made by him in said bank, and from other credits to which he had become entitled in and from said bank, as more fully appears by a copy of said account filed herewith as Exhibit T, to which reference is craved as part hereof.

That the only debt then due on said 14th May, 1867, by said Thomas P. May to said bank was the sum of two hundred and thirty-seven
387 thousand and eight $\frac{89}{100}$, arising from and consisting of the overdraft paid by said bank upon the checks of G. T. Beauregard, lessee, said overdraft being seventy-*too* thousand and eight $\frac{89}{100}$ dollars, the credit of forty thousand dollars entered by said bank to the credit of G. T. Beauregard, lessee, of date the 15th September, 1866, the amount of the bill of exchange drawn by Thomas P. May upon A. C. Graham on or about the 19th March, 1867, and entered by said bank to the credit of G. T. Beauregard, lessee, of date 19th March, 1867, said overdraft, said forty thousand dollars, and the amount of said bill of exchange making up the sum of $237,008\frac{89}{100}$ for which recovery is sought by complainant in his bill, all of which was paid by said bank upon the checks of G. T. Beauregard, lessee, and was used for the benefit of and in the business of the partnership of Thomas P. May, A. C. Graham, and G. T.
388 Beauregard, as set forth in the original answer herein filed, and for all of which said Thomas P. May was indebted and liable to said bank.

That on the 14th May, 1867, said Thomas P. May undertook to assign to the United States said balance of three hundred and fifteen thousand seven hundred and seventy-nine dollars ($315,779), then standing to his credit on the books of said bank, as appears by reference to the act of 14th May, 186 , filed with complainant's bill as Exhibit N, to which reference is craved.

That said United States received said assignment and a check drawn by said May upon said bank for said balance with the knowledge of his said indebtedness to said bank; that on the 31st October, 1867, the United States, through Edward Jordan, Solicitor of the Treasury, executed an obligation to these respondants, Joseph Hernandez, Alexander

389 Bonneval and George Binder, which is filed with complainant's bill as Exhibit J, in which, among other things, it is stipulated "that the United States should protect the purchasers against and save them harmless from any claim which may at any time be set up against them personally or against the said copartnership, or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or its assigns, for the recovery of or in reference to an overdraft of seventy-two thousand and eight $\frac{89}{100}$ dollars, and a promissory note for forty thousand dollars, in all one hundred and twelve thousand and eight $\frac{89}{100}$ dollars, which apparently stand to the credit of G. T. Beauregard, as lessee of the New Orleans and Carrollton Railroad, but which in truth and reality are exclusively due and owing to said bank by said Thomas P. May"; that said bill of exchange for $125,000.00 should have been charged by said bank to said May and
390 debited to him in account as of the day of its date; that upon said assignment and check of May for $315,779.00, the United States took from said bank the sum of ninety-four thousand dollars, to which it was not entitled, $80,000.00 of said $94,000.00 being debited to said May in said account herewith filed as of date the 16th May, 1867.

Now these defendants aver that by reason of the facts herein set forth, on said 14th May, 1867, compensation had taken place between said debt of $315,779.00 due by the bank, and said debt of $237,008.89 dollars due by Thomas P. May to said bank, and for which the complainant asks for a decree in this suit, was compensated on said 14th May, 1867, and should be deemed to be extinguished by said debt of $315,779.00, said balance due by said bank to said May; that no portion of said $315,779 has ever been paid by said bank to said May or to the United States, except said sum of $94,000, wrongfully taken by said United States as aforesaid, and said United States still hold said check and assignment of said $315,779, all of which these defendants are ready to aver and prove.

Wherefore these defendants pray the leave of the court to file
391 this amended and supplemental answer; that the parties to this suit be served with a copy hereof, and they pray to be herein dismissed with costs, and as prayed for in their original answer.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
" J. HERNANDEZ.
" ALEX. BONNEVAL.
" G. W. BINDER.
" LEA, FINNEY & MILLER,
Solicitors of Def'ts.

G. T. Beauregard, president of the New Orleans and Carrollton Railroad Company, A. Bonneval, Joseph Hernandez, G. Binder, being duly sworn, depose and say that all the matters and things in the foregoing answer contained which are stated in the personal knowledge of these affiants are true and correct, and those stated upon the information of others they believe to be true.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
" ALEX. BONNEVAL.
" J. HERNANDEZ.
" G. W. BINDER.

Sworn to & subscribed before me this 25th day of March, 1871.

(Signed) F. B. VINOT,
D'y Cl'k.

Marshal's return.

392 Received March 31st, 1871, by the U. S. marshal, and on the 1st day of April, 1871, served a copy of the within supplemental and amended answer on Charles Case, receiver, by delivering the same to him in person at No. 36 Natchez street, in this city.

New Orleans, April 1st, 1871.

(Signed) S. W. REID,
D'y U. S. Marshal.

393 *Exhibit T, filed with amended answer.—Filed March 30, 1871.*

Thos. P. May in account with the First National Bank of New Orleans.

Individual Ledger K to L, No. 2, folio 168.

Dr.				Cr.			
1864.				1864.			
April	7.	To checks	15,000	April	2.	By cash	15,000
	18.		175,000		11.		175,000
May	23.		40,000	May	20.		50,000
	26.		7,000		23.		400,000
June	6.		40,000		24.		200,000
	9.		60,000	June	9.		250,000
	10.		28,000				80,000
	11.		50,000		24.		7,000
	18.		5,000	July	9.		40,000
	20.		127,366	Aug.	1.		25,971 28
	23.		50,000	Oct.	5.		351,246 44
July	13.		50,000		8.		41,000
Sep.	1.		65,971 28	Nov.	16.		200,000
	28.		250,000				
Oct.	4.		100,000				
	5.		100,000				
	7.		200,000				
	8.		100,000				
	14.		2,502 59				
	24.		25,000				
	26.		75,000				
	29.		30,000				
	31.		100,000				
		To balance	139,377 85				
			1,835,217 72				1,835,217 72
1864.				1864.			
Dec.	13.	To checks	13,509	Nov.	16.	By balance	139,377 85
	23.		7,035	Dec.	12.		6,783
	24.		3,748				3,094 11
	26.		101,200		13.		20,000
	28.		500		16.		100,000
	31.		1,000	1865.			
1865.				Jan'y	4.		250,000
Jan'y	3.		1,233 18		6.		150,000
	4.		236,000		19.		2,367 03
	6.		1,000				
	7.		5,000				
	9.		50,000				
	12.		6,000				
	14.		15,000				
	16.		204,000				
	21.		4,400				
		To balance	22,005 81				
			671,621 99				671,621 99
1865.				1865.			
Jan'y	24.	To checks	5,259 90	Jan'y	23.	By balance	22,005 81
Feb'y	7.		5,000	Feb'y	3.	" cash	56,655 17
	10.		500		4		1,194 31
		To balance	69,095 39				
			79,855 29				79,855 29
1865.				1865.			
Feb'y	14.	To checks	69,095 39	Feb'y	14.	By balance	69,095 39

Thos. P. May in account with the First National Bank—Continued.

Dr | Cr.

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1865.				1865.			
Nov.	30.	To checks	7,275 27	Nov.	30.	By cash	24,500
Dec.	1.		500	Dec.	6.		8,698 20
	2.		329 70		8.		5,928
	6.		500		9.		19,802 77
			2,000				
			2,000				
	8.		179 92				
	11.		2,000				
	13.		513				
	14.		1,312 50				
			1,475 81				
	15.		5,168 60				
	16.		1,283 33				
	18.		1,000				
	19.		562 50				
	20.		100				
	23.		1,536				
	28.		900				
			310				
			605				
			125				
	29.		320				
			5,000				
	30.		392 53				
		Balance to Ledger A & M, No. 2	23,539 75				
			58,928 97				58,928 97
1866.				1866.			
Jan'y	2.	To check	1,722 48	Jan'y	1.	By bal. fr. Ledg. 1	23,539 75
	2.		9,750		3.		206 66
	3.		250		4.		10,000
	4.		200		30.		25,000
	5.		3,200				
	6.		150				
	15.		170				
	16.		4,281 40				
	18.		359 75				
	20.		1,000				
	26.		3,751 21				
	29.		4,251 17				
	30.		201 12				
	"		14,211 50				
	"	Balance	15,247 78				
			58,746 41				58,746 41
Feb'y	3.	To check	652	Jan'y	30.	By balance	15,247 78
	"		400	Feb'y	19.	" cash	920 17
	5.		200		20.	"	4,371 42
	7.		1,119 50		23.	"	3,000
	8.		12,500		27.	"	2,000

395

Feb'y	10.	To check	177 62	Feb'y	28.	By cash	5,000
	19.	"	79 35	M'ch	1.	"	2,500
	21.	"	160 40		3.	"	27,000
	27.	"	100		20.	"	2,518 75
M'ch	1.	"	907 04		21.	"	9,000
	3.	"	11,199 75		23.	"	1,600
	5.	"	9,100		31.	"	2,000
	"	"	774 50	Ap'l	7.	"	10,000
	6.	"	6,371 44		18.	"	2,000
	7.	"	224 47		19.	"	6,000
	8.	"	250	May	4.	"	83,930
	9.	"	562 50		8.	"	30,000
	"	"	10,750		25.	"	10,000
	10.	"	108 50		30.	"	500
	15.	"	200	June	7.	"	2,280
	16.	"	54 40		11.	"	7,695
	21.	"	2,518 75		12.	"	15,000
	22.	"	1,488 96				
	24.	"	740				
	26.	"	311 50				
	"	"	413 90				
	29.	"	2,500				
Ap'l	7.	"	75				
	9.	"	400				
	10.	"	6,000				
	13.	"	60				

Thos. P. May in account with the First National Bank—Continued.

Dr.				Cr			
	14.	To check	238 14				
	"	"	3,796 45				
	16.	"	20,089 73				
	18.	"	445 50				
	19.	"	48 50				
	27.	"	200				
	28.	"	2,061 15				
May	3.	"	409 99				
	7.	"	117 17				
	"	"	100				
	8.	"	87,000				
	12.	"	318 38				
	14.	"	500				
	15.	"	291 01				
	16.	"	4,425				
	"	"	200				
	18.	"	4,000				
	19.	"	351 98				
	21.	"	500				
	22.	"	740				
	23.	"	254 80				
	25.	"	8,099				
	"	"	200				
396							
	1866.						
May	29.	To check	80				
June	2.	"	745 27				
	5.	"	190				
	9.	"	26,000				
	11.	"	283 10				
	12.	"	61				
		Balance	3,417 41				
			242,563 12				242,563 12
June	20.	To check	1,287 50	June	12.	By balance	3,417 41
	22.	"	500		23.	" cash	35,140
	23.	"	25,000				
	26.	"	200				
	27.	"	180 40				
	29.	"	200				
	"	"	76				
	30.	"	10,536				
July	2.	"	397 50				
		Balance	180 01				
			38,557 41				38,557 41
Sep.	3.	To check	2,636	July	2.	By balance	180 01
	6.		200,000		3.	" ex.	2,500
	7.		200,000	Sep.	6.	" "	200,000
	8.		100,000		7.	" "	200,000
	10.		100,000		8.	" "	588,643 29
	11.		150,000	Oct.	22.	" "	95,000
	12.		150,000				
	13.		88,643 29				
	25.		494 35				
Oct.	13.		20,255 73				
	15.		15 50				
	16.		100				
		Balance	74,178 43				
			1,086,323 30				1,086,323 30
	1866.						
Oct.	23.	To check	500		1866.		
	"	"	40,000	Oct.	22.	By balance	74,178 43
	24.	"	1,150	Nov.	8.	" cash	250
	25.	"	10,350		19.	"	9,115
	"	"	1,000		27.	"	4,019 03
	27.	"	110	Dec.	1.	"	5,000
	29.	"	500		3.	"	95
Nov.	24.	"	100				
	26.	"	129 01				
	27.	"	14,211				
	28.	"	5,100				
Dec.	1.	"	1,300				
	3.	"	101 75				
		Balance	18,005 70				
			92,657 46				92,657 46

Thos. P. May in account with the First National Bank—Continued.

Dr.				Cr.			
397							
1866.				1866.			
Dec.	5.	To extra folio, 881 *	4,019 03	Dec.	3.	By balance	18,105 70
		" checks	1,547 50				
		balance	12,539 17				
			18,105 70				18,105 70
Dec.	6.	To checks	195 40	Dec.	5.	By balance	12,539 17
	7.		154		27.	" gold	1,700
	8.		75 50		31.		225,000
	14.		105				
	15.		11,030				
	18.		250				
	21.		200				
	24.		418 10				
	27.		210				
	"		9,627 64				
	31.		105				
	"		25,000				
		Balance to Ledg. M to Z	191,868 53				
			239,239 17				239,239 17
1867.				1866.			
Jan'y	2.	To checks, gold	1,700	Dec.	31.	By bal. from Ledg. A to M	191,868 53
		L. T.	30,000	1867.			
			130	Jan'y	10.	ex	25,200
	3.		67,000		12.	cash	1,000
			65,200		14.		50,000
			20,000		24.		4,000
			45,000		26.	ex	4,633 34
			75	Feb'y	6.		13,250
			1,000				
			168 65				
			20,000				
			15,000				
			15,000				
			255 57				
			1,000				
			3,407 21				
			3,000				
			3 68				
			3 30				
		Balance	2,008 28				
			289,951 87				289,951 87
1867.				1867.			
Feb'y	16.	To checks	500	Feb'y	14.	By balance	2,008 28
			15,000		15.	cash	15,000
	18.		900		25.		100,000
	23.		337 50		27.	exc	4,637 77
	25.		100,000	M'ch	7.	"	100,000
	27.		4,637 77		28.	"	4,533 33
M'ch	2.		1,600		30.	cash	500,000
398							
1867.				1867.			
March	5.	To checks	1,262 30	Ap'l	18.	By cash	200,000
	7.		100,000		26.		135,000
			50		27.		125,000
	25.		900				
	28.		4,533 33				
April	1.		500,000				
	8.		4,000				
	11.		500				
	13.		2,016 75				
	16.		2,880 50				
	18.		250				
	22.		100,000				
			654 75				
	23.		1,025 75				
	27.		4,533 33				
		To balance	341,197 40				
			1,186,179 38				1,186,179 38

Thos. P May in account with the First National Bank—Continued.

Dr.				Cr.			
1867.				1867.			
April	29.	To checks	30,530	April	27.	By balance	341,197 40
	30.	"	2,000		29.	" cash	5,175
		"	1,000	May	4.	" "	6,760
		"	642 65			" "	1,000
May	1.	"	350		6.	" "	150
	3.	"	1,000				
	4.	"	1,913 61				
	9.	"	1,066 50				
	15.	"	80,000 00				

399 *Testimony for defendants.—Filed April 17th, 1871.*

United States circuit court. In chancery.

CHARLES CASE, REC'R, &C., *vs.* G. T. BEAUREGARD & AL. } No. 5931.

Testimony taken before Hon'l J. B. Weller, U. S. commissioner, April 6th, 1871.

Present, for complainant, J. D. Rouse, esq.; for N. O. & C. R. R. Co., Alex. Bonneval, Geo. Binder, Jos. Hernandez, G. T. Beauregard, Messrs Lea, Finney & Miller.

S. R. PROCTOR sworn and examined on behalf of defendants.

By Mr. MILLER:

I was cashier, treasurer, and inspector of the Carrollton Railroad from its inauguration under the lease to Beauregard in April, 1866, up to the present time.

Q. State whether you can say anything as to the cash payments made upon property.

A. These are the cash payments on property purchased by the partnership of May, Graham & Beauregard between April, 1866, and
400 September, 1866 (referring to checks marked L M, M N, N O, and O P, which said checks were offered in evidence by Mr. Miller).

Q. Can you particularize the property on which these payments were made?

A. Only from this schedule, marked Schedule No. 1 (referring to said schedule in printed book). One cash payment was made on property corner Napoleon and St. Charles streets, purchased from widow S. J. Peters. Another cash payment on property on square bounded by St. Charles, Apollo, Berlin and Milan streets, purchased from S. A. Kohn. Another cash payment on property purchased from W. C. Raymond. And another cash payment on property purchased from the New Orleans and Carrollton Railroad Company, the Carrollton Hotel.

Q. Now, in a general way, can you state what the earnings of the road were during that period?

A. The earnings are all stated here.

Q. What was the amount of the earnings of the road during that period, from September, 1866, to April, 1866?

A. Sixty-five thousand two hundred and sixty-three dollars and nine-five cents ($65,263.95).

401 Q. What were the other resources of the road during that period?

A. The means contributed by Mr. May and Mr. Graham.

Q. What amount did they contribute?

A. I get that amount the same as I did the others—from this schedule No. 1. These are taken from the books.

Q. Have you no recollection on the subject?

A. I have a recollection that these things are right, but I have no particular recollection of the items.

(Mr. Rouse objected to the witness testifying to anything from the printed record.)

Q. Was not this railroad in operation and carrying passengers between April, 1866, and September, 1866?

A. Yes, sir; the steam road was in operation then and part of the horse road, but they were just about changing from the one to the other.

Q. Did not this road make earnings during that period?

A. Yes, sir.

Q. Can you not give us some idea of the earnings by the month or the earnings during the period from April, 1866, to September, 1866?

A. I cannot without referring to the books.

Q. You have some general idea on the subject?

402 A. I would not like to put down figures without referring to the books.

Q. Did the road make five hundred dollars a month or a thousand dollars a month?

A. I could not tell you; you need not try to get it out of me that way.

Q. Was it your department to handle the money?

A. Yes, sir.

Q. Have you any recollection of any earnings being paid in during that period?

A. Yes, sir; they used to be paid in every day.

Q. But you cannot state from your recollection what they were?

A. No, sir; it is impossible.

Q. Will you be able to state by referring to any figures that should be presented to you?

A. If the books were given to me, I no doubt would be able to certify that these things are true. The receipts were handed in and counted every day and regularly put down by the bookkeepers. I would state that there was also a cash payment made on lease of hotel purchased from P. Williams by the partnership on June 16th, 1866, and Mr. May told us to give him credit for it.

403 Q. Between September, 1866, and April, 1867, have you any knowledge of any payments made by the partnership of May, Beauregard and Graham upon property?

A. Yes, sir; there were payments made.

Q. Please state what those payments were.

A. I can state them from memoranda. I can refer to the books.

Q. You can refer to the books.

A. This check for twenty-eight hundred and eighty dollars was for property purchased from Mr. Kohn (producing check). The date of that payment was May 3d, 1867, and it was made by check produced marked P Q. (Said check was offered in evidence by Mr. Miller.) There was also paid a note, which is now produced and marked Q R, for

property purchased from W. C. Raymond, amounting to four thousand one hundred sixty-six $^{66}/_{100}$ dollars. (Said note was also offered in evidence by Mr. Miller.) There was also a cash payment made on a note for property purchased from the New Orleans and Carrollton Railroad Company, which was made by check now produced, and marked R S. (Said check was also offered in evidence by Mr. Miller.)

404 Q. Were there any other payments made on property purchased during that period?

A. Not that I recollect.

Q. Have you any knowledge of any other expenses incurred by this partnership during that period, from September, 1866, to May, 1867?

A. They were making expenses all the time.

Q. Large expenses?

A. Yes, sir; they were changing the road from steam to horse cars.

Q. What were the resources of the road during that time? Did the road make any earnings during that period?

A. Certainly they made earnings.

Q. Considerable earnings?

A. They were less, as the travel on the road was interfered with by the reconstruction, but still the earnings were something all the time.

Q. As you were the treasurer and cashier of the company, you must have had some knowledge of the resources of the company during that period. What were they besides the earnings?

A. We overdrew on the bank.

Q. That was one item?

A. Yes, sir.

405 Q. Was there any other item?

A. Well, from time to time there would be amounts placed upon the bank book, going to make up the overdrafts.

Q. Well, besides the overdrafts and the earnings, had you no other resources?

A. Not that I know of.

Q. Did you have sales of property or anything of that kind?

A. Oh, yes; there might have been some sales. There were sales of some rolling stock and some old iron.

Q. From your knowledge of the facts, can you not state what the amount of those earnings were?

A. No, sir; I have no recollection of the amount. I cannot state what the amount was without referring to the books. The books were not even kept by me, but were kept by the clerk. I knew that they were right, however.

Q. What was the balance, if any, in the books of the partnership on the 11th of May, 1867?

A. It was something like four thousand dollars. I recollect that, and I will tell you why, because I have been looking into it lately.

Q. Then all the resources of the road had been consumed, except that balance of four thousand dollars?

A. Yes, sir.

406 Q. Will you turn your attention to the period from May 11th, 1867, and subsequent to that period, and state whether you have any knowledge of any payments made for the debts of that partnership since that period?

(Mr. Rouse objected on the ground of irrelevancy, as having nothing to do with the issues in this case.)

A. (Producing five notes, which were offered in evidence, and marked S T, T U, U V, V W, and W X.) These were payments made for the

debts of the partnership of May, Graham and Beauregard, subsequent to the 11th of May, 1867.

Q. What were those payments for?

A. They were for mules, most of them. There may be some for other things there. I have not looked at them. I think they were for mules.

Q. Look at the documents themselves and state what they were for. (Shown said documents marked S T, T U, U V, V W, and W. X.)

A. The document marked S T does not say what it is for, nor does the document marked T U, but they are in favor of Elliott, and we never got anything from him but mules or horses. All of these notes are in favor of Ellio t, and were all given for mules or horses.

407 Q. What was the condition of this partnership on the 11th of May, 1867, in respect to debts? Did they owe any debts?

A. Certainly they owed debts.

Q. These notes that you have just looked at were for some portions of the debts due at that time?

A. Yes, sir.

Q. Besides these notes that you have produced, did they owe any other debts on the 11th of May, 1867?

A. Yes, sir; they must have owed other debts. I cannot state the amount from my own knowledge.

Q. You signed all the checks upon the First National Bank, did you not?

A. Yes, sir; I signed all the checks.

Q. State how it was that the partnership came to overdraw upon the First National Bank?

A. (Producing paper.) Here is a letter of mine to Mr. May, dated September 4th, 1866, or at least this is a copy taken by me at the time in my own handwriting when I wrote it. It is my information to Mr. May stating that we had certain amounts to pay, and that we had only a certain amount in bank, and asking him what we were to do.

Q. When that note was written, what was the condition of your account with the First National Bank?

408 A. We had a small balance on hand. That letter which I have produced states the amount. Some three hundred odd dollars, if I recollect right.

Q. Had you ever overdrawn on your bank account before you wrote that note?

A. No, sir; not that I have any recollection of at all.

Q. Subsequent to the writing of that note, did you have any response from Mr. May or any intercourse with him in reference to the subject?

A. No, sir; excepting that he told me to draw, that it was all right, or would be made all right, and to keep on and draw what we required.

Q. Did he state who was to make it all right?

A. He stated that he would make it all right.

(The copy of the note referred to was offered in evidence by Mr. Miller, and marked Y Z.)

Q. Was it upon that letter or communication and the verbal answer to it by Mr. May that you made the overdrafts on the bank?

A. Yes, sir.

Q. Did you have any other communication with any officer of the bank with reference to overdrawing?

A. No, sir.

409 Q. Did any other officer of the partnership or of the railroad have any communication with the bank in reference to these overdrafts?

A. Not that I know of.

Q. You had no other communication except with Mr. May?

A. None except with Mr. May.

Q. Was Beauregard here at the time that this overdrawing commenced?

A. No, sir.

Q. Did Beauregard take any part in reference to getting these overdrafts from the bank?

A. No, sir; not that I know of. He may have signed some checks at the time that we were overdrawing, but the first checks were signed by Mr. May and myself during the overdraft.

Q. Did you ever make any communication to Beauregard in reference to these overdrafts, any special communication?

A. I may have informed him, and I no doubt did, that we were overdrawing. It must have been my duty, as a matter of course, to do so.

Q. By whom were these five notes in favor of Dr. Elliott paid?

A. I can state by the books.

Q. I presumed that you knew who made the payments subsequent to May, 1867, by what body or by what person they were made,

410 as you made the payments yourself?

A. The notes may have been paid by the giving of other notes, which other notes were paid.

Q. My question is as to who paid them.

A. Some of the notes were taken up by the parties, if I am not mistaken.

Q. What parties? Were any of them paid by the old partnership of May, Beauregard, and Graham?

A. No, sir; they could not have been paid by them.

Cross-examined by Mr. ROUSE:

Q. As treasurer you signed all the checks drawn by Beauregard, lessee for the partnership, upon the First National Bank of New Orleans?

A. Yes, sir.

Q. You made the deposits, did you?

A. No, sir; I did not make them personally. They were made by one of the clerks in the office.

Q. They were made under your direction and with your knowledge?

A. Under my directions and with my knowledge.

Q. You knew the state of the accounts then at all times?

A. Yes, sir; I had the check-book; how could I help knowing it?

411 Q. You knew how much it was overdrawn?

A. Yes sir.

Q. Did you communicate these facts to Mr. Beauregard of the overdrafts?

A. He was not here at the time of the overdraft—that is, of the first one.

Q. I am speaking of the time when any overdraft existed?

A. Yes, sir; I told the general that we were overdrawing, but I wish you to understand that at the time of the first overdraft he was not here.

Q. The first overdraft occurred in September, 1866?

A. In September, 1866.

Q. And Mr. Beauregard returned in October, 1866?

A. I do not recollect the date.

Q. How near can you come to the time?

A. My memory is very bad about dates, and I do not like to specify any.

Q. Was he here prior to the first of January, 1867?

A. He returned from Europe, I don't know exactly at what time. It was some time during the winter or fall, I do not recollect exactly.

Q. You think it was prior to the 1st of January?

A. I cannot say, sir.

Q. After he returned did you call his attention to the overdrafts?

412 A. Yes, sir.

Q. And after that, up to the 13th of May, 1867, did you frequently call his attention to those overdrafts?

A. I cannot say that; I did not bother my head about it. I certainly informed him, however, that we were overdrawing.

Q. Had you knowledge at the time of the credit of forty thousand dollars, on the 15th of September, in that account of the bank?

A. If you refer to accounts and dates, I will ask to have the books.

Q. Do you remember that there was a credit of forty thousand dollars in that account?

A. There was a credit of forty thousand dollars in that account; I recollect that.

Q. It was the proceeds of a note of the partnership?

A. The proceeds of a note. Will you let me show this bank book? (Producing book.)

Q. Certainly.

A. I want to show you the first information that I had of the note. It was not until this book was sent to the bank to be balanced that I knew anything about it.

413 Q. Refer now, if you please, to that bank book which you have produced, and state whether that is the deposit book kept by you with the First National Bank.

A. That is the book kept by me.

Q. The entries in that book were made from time to time by the officers of the bank, were they not, as the deposits were made by you?

A. Yes, sir.

Q. Refer to the entry in that account of Beauregard, lessee, with the First National Bank, on the 15th day of September, and state what credits were given to Beauregard, lessee, on that date?

A. Two hundred and sixty-three dollars and seventy cents ($263.70) and forty thousand dollars ($40,000).

Q. What was the $263.70 credited for?

A. This I imagine was our receipts or the receipts of the road.

Q. You mean that you deposited cash to that amount?

A. Probably that.

Q. What is the other credit on that date? State the amount and what it was for.

A. I did not find that out until afterwards. I understood that it was the proceeds of a note.

Q. What is the amount?

414 A. Forty thousand dollars.

Q. What was the amount of the credit entered in said account on the 16th of April, 1866?

A. Twenty thousand dollars.

Q. What was that?

A. That was money advanced either by Mr. May or Mr. Graham.

Q. As a part of the capital of the partnership?

A. Yes, sir; as part of the capital under the agreement.

Q. State what credits were entered in said account on the 4th day of May, 1866.

A. One of twenty thousand dollars and one of four hundred and thirty-eight dollars and fifty cents.

Q. What was the twenty thousand dollars credit composed of?

A. It was money given by either Mr. May or Mr. Graham in accordance with their agreement.

Q. As a portion of capital?

A. As a portion of capital.

Q. What is the item of $438.50 composed of?

A. I cannot say, exactly, but that must be our cash deposit on that day.

Q. What credits are entered on that account on the 9th day of June, 1866?

A. There is one credit of three hundred and eighty-three dol-
415 lars and sixty-five cents ($383.65).

Q. What was that for?

A. That was our receipts or daily deposit.

Q. What other credit is there on that date?

A. There is another one of twenty thousand dollars.

Q. What was that credit composed of?

A. That was for the same purpose as the credit on the first page, and furnished by the same parties.

Q. It was a payment on account of the capital agreed to be invested by May and Graham?

A. Yes, sir.

Q. Do you know which one paid in twenty thousand dollars at that date?

A. I cannot tell that; I know it was one of them.

Q. On the 10th of July what credits were given on that account?

A. There is also entered the daily receipts or daily deposits of four hundred and forty-three dollars and eighty cents ($443.80), and another credit of twenty thousand dollars.

Q. What was the twenty thousand dollar item?

A. Capital invested or contributed by one of those two gentlemen, May & Graham; I do not know which.

416 Q. What are the credits entered on that account on the 19th day March, 1867?

A. There is one credit of one hundred and forty-two dollars.

Q. What was that?

A. I suspect those were our receipts.

Q. That was cash deposited?

A. Cash deposited.

Q. The other credit on that date was how much?

A. One hundred and twenty-five thousand dollars was placed upon my book.

Q. What was that for?

A. That was to cover the overdraft.

Q. That was a fictitious credit, was it not?

A. I do not know anything about that. My book was sent to the bank and they placed that on it.

Q. When does it appear to have been placed in your book; subsequent to what date?

A. I do not recollect about that now.

Q. Subsequent to what date is that credit entry of one hundred and twenty-five thousand dollars, following the regular entries of the bank?

A. Yes, sir; I had the check certified myself, and I could not have done that if the bank had been closed.

Q. You say you had a verbal understanding with Graham that
438 his interest in the partnership was only nominal, and really belonged to you?

A. Yes, sir.

Q. Was Mr. Beauregard cognizant of that understanding?

A. Not that I am aware of.

Q. Did Mr. Graham keep an account with the First National Bank of New Orleans?

A. Well, he did at one time; I suppose he must have kept it. I do not know really whether he did or not.

Q. He paid the amounts to the partnership as capital which appears to have been invested in it by A. C. Graham, did he not? Did he not pay them himself?

A. I think he did pay for some of them.

Q. By checks against his account in the First National Bank of New Orleans?

A. I do not remember how he paid them, whether by checks or otherwise.

Q. At the time of the failure of the bank, were you not largely indebted to it by reason of your acceptances or endorsements of commercial paper unmatured, or which had matured?

A. I do not think I was indebted for any paper that had matured.

439 Q. Were you not indebted to the bank upon an acceptance by you for a draft drawn by A. C. Graham for one hundred thousand dollars?

A. I do not think I could identify any particular check unless it was presented to me; I suppose I could then. There were so many transactions that I could not, without having the documents presented to me, testify whether I did accept them or not.

Q. How much money did you furnish to the partnership in your own name?

A. I cannot remember.

Q. Before entering into the copartnership of May, Beauregard and Graham, had you not made a previous contract of partnership for the purpose of carrying on that road with Beauregard alone?

A. I think there was; I am not certain about it.

Q. What was the object, then, in bringing in Graham afterwards; was it not, as expressed by you to Beauregard, for the purpose of obtaining more capital than you were able to furnish?

A. I do not remember making such a statement; perhaps I did; I do not remember.

440 Q. Do you remember of receiving the proceeds of a note to be placed to the credit of Beauregard, lessee, in September, 1866, for forty thousand dollars?

A. No, sir; I do not remember any particular note.

Redirect by Mr. MILLER:

Q. Did Mr. Graham ever claim to have an interest in this partnership during its existence?

A. To me he never did; in fact, I never knew that he had claimed it until you informed me of it.

Cross-examination resumed.

By Mr. ROUSE:

Q. Mr. Graham was in New York from July, 1866, until after the failure of the bank, was he not?

A. I do not remember the exact time that he went on, but he was there at the time of the failure of the bank.

Q. Do you not remember that he went in the summer of 1866?

A. I think it was in the summer or fall; I cannot remember the exact period.

Q. Under your articles of copartnership, it was not necessary
441 that he should make a special claim to you that he was a partner, was it? Did you make a claim to him that you were a partner?

A. I thought that Mr. Miller's reference was singly——

Q. (Interrupting.) Did you ever make a claim to Mr. Graham that he was not a partner?

A. No, sir.

(Signed) T. P. MAY.

Sworn to this 6th April, 1871.

(Signed) JOHN B. WELLER,
U. S. Com.

Mr. Miller offered in evidence the power of attorney from Graham to May, marked Exhibit E (page 346). Also schedules marked No. 1, No. 2, and No. 3, annexed to the answer (page 332 to 334 of this transcript).

Mr. Rouse objected to the introduction of said schedules on the ground that they were not competent testimony of the facts sought to be proved by them.

I do hereby certify the foregoing depositions of S. R. Proctor, Louis Meig, and T. P. May were taken before me at the time and place
442 therein named, and were reduced to writing by C. W. Colton, a stenographer, and that the said Colton afterwards, to wit, on the 15th April, 1871, appeared before me, and on solemn oath declared that they were in all respects correct translations from the original notes thus taken.

Given under my hand and official seal, at New Orleans, this 15th April, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. Comm'r & Master in Chancery.

443 *Testimony.—Filed April 17th*, 1871.

United States circuit court. In chancery.

CHAS. CASE, RECEIVER, &C., *vs.* G. T. BEAUREGARD & ALS. } No. 5931.

Testimony taken before Hon. J. B. Weller, U. S. commissioner.

NEW ORLEANS, *April 4th*, 1871.

PETER MCBRIDE sworn and examined on behalf of the defense.

By Mr. MILLER:

Q. Were you connected with the Carrollton Railroad Co. in 1866 and 1867?

A. Yes, sir.
Q. From the time of the lease of Beauregard?
A. Yes, sir; and previous to that.
Q. The lessee kept an account with the First National Bank?
A. Yes, sir.
Q. Did he keep another account with any other bank?
A. No, sir.
Q. All the earnings of the road were deposited in that bank?
A. Yes, sir.
444 Q. And all its means were deposited in that bank?
A. Yes, sir.
Q. Look at this document and state whether it is the account kept with the First National Bank.
(Shown account annexed to bill of complaint, and marked Exhibit G.)
A. That is the account.
Q. Examine that account and state at what period the first overdraft was made?
A. About the middle of September, or the 14th of September the first overdraft occurred.
Q. From the organization of the partnership down to the middle of September, 1866, had the lessee made deposits in the bank?
A. Yes, sir; as is shown by the account.
Q. Please direct your attention to the document which is filed in the record marked Schedule No. 1, and state whether that shows the receipts and expenditures of the partnership from the date of the commencement of the partnership up to September 6th, 1866.
A. Yes, sir; that is the statement showing the receipts and expenditures within the time mentioned.
445 Q. During that period of time (from the date of the partnership up to September 6th, 1866), what payments were made upon property purchased for account of the partnership?
A. There was a cash payment on property on the corner of Napoleon and St. Charles streets, purchased from widow S. J. Peters on the 28th April, 1866, of six thousand dollars ($6,000). There was also a cash payment made on the square bounded by St. Charles, Apollo, Berlin, and Milan streets, as per act of purchase thereof from S. A. Kohn, of two thousand six hundred and sixty-six dollars and sixty-five cents ($2,666.65); the date of the payment is April 30th, 1866.
Q. You made the payments yourself, did you not?
A. The treasurer made the payments. I had the books and entered all the payments accordingly.
Q. Who was the treasurer?
A. Mr. Proctor. There was also some property purchased from W. C. Raymond in the square bounded by St. Charles, Apollo, Berlin, and Napoleon streets, on which a cash payment was made of four
446 thousand one hundred and sixty-six dollars and sixty-five cents ($4,166.65); the date of the payment is May 5th, 1866. There was also a purchase of the hotel at Carrollton on which a cash payment was made on the 30th of June, 1866, of eight thousand and six hundred and sixty-six dollars and sixty-six cents ($8,666.66).
Q. Please state what the earnings of the road were during the same period.
A. I have verified this schedule No. 1 with my books, and found the items all correct. There was received from capital invested and contributed to partnership eighty-eight thousand dollars ($88,000.00), and

from the earnings of the road sixty-five thousand two hundred and sixty-three dollars and ninety-five cents ($65,263.95), during that period beginning on April 16th, 1866, and ending September 6th, 1866.

Q. Direct your attention to Schedule No. 2, which runs from September 6th, 1866, to May 11th, 1867, and state whether it shows the receipts and expenditures of the partnership during that period.

A. Yes, sir; it does, with the exception of one error which has been made in the date of a payment, which does not amount to anything.

447 Q. There are included in that schedule some notes paid by the company on property, are there not?

A. Yes, sir.

Q. Will you produce those notes?

(Witness here produced certain documents.)

Q. This note was paid by the company for property during the period mentioned, was it not?

(Shown paper.)

A. Yes, sir.

Mr. Miller offered said note in evidence, marked E F.

Q. This note was paid by the partnership on the 3d of May, 1867?

A. Yes, sir; there is another note that we paid for the property purchased from Mr. Raymond, which I have not got. I have not the one year note. I suppose the notary has it. I have the two year note with me.

Q. Do you know of the payment of the first year note?

A. Yes, sir; I know that the partnership paid the second payment on the property purchased from W. C. Raymond, amounting to four thousand one hundred and sixty-six dollars and sixty-six and two-thirds cents ($4,166.66⅔).

Q. The date of the payment was when?

A. May 8th, 1867. The partnership also paid a cash payment on property purchased on December 17th, 1866, from the New Or-

448 leans and Carollton Railroad Co. Those were all the payments on property during that period.

Q. At the date of the conveyance of T. P. May to the United States in May, 1867, was or was not the partnership indebted for property or for any other purposes?

A. Yes, sir; here is a list of notes and bills that were due at the time (referring to schedule No. 3).

Q. What was the amount of the indebtedness of the partnership at that date, May, 1867?

A. It amounted to one hundred and seventeen thousand seven hundred and twenty-five dollars and eighty cents ($117,725.80), as is shown by schedule No. 3.

Q. In this schedule No. 3 are references to various notes; have you got those notes?

A. I have some of them with me. (Witness here produced four notes.)

Q. These were notes for property?

A. Yes, sir.

Q. There are two other notes mentioned in schedule No. 3, which were given for the hotel at Carollton; have you got those notes?

A. Yes, sir. (Witness here produced two other notes.) The company having sold the property gave up the notes to be cancelled.

449 Q. There is also another note referred to for three thousand and ninety-three dollars and thirty-three and a third cents ($3.093.33⅓). (Witness produced said note, marked G H.)

Q. Are these notes which you have produced the notes referred to in schedule No. 3?

A. Yes, sir.

Q. By whom were they paid?

A. They were paid by the present organization.

Q. When?

A. The note for the horse-station property was paid on February 25th, 1870.

Q. Here is a note for $4,333.33; by whom was that note paid?

A. It was paid by the present company.

Q. Whom do you mean by the present company?

A. The New Orleans and Carrollton Railroad Company, as per act of fusion.

Q. Here is another note for $4,333.33, payable one year after date; by whom was that note paid?

A. It was paid in the same manner and by the same parties.

Q. Here is another note, dated December 17th, 1866, payable two years after date; by whom was it paid?

A. It was paid by the present company on February 25th, 1870.

Q. Here is another for $4,333.33, dated December 17th, 1876, payable in two years; was that note also paid?

450 A. It was paid by the present company.

Q. In whose possession are those notes now?

A. They are held by the company.

Q. Direct your attention to the note for $8,666.66; has that note been paid?

A. Yes, sir.

Q. By whom?

A. It was paid by the present company?

Q. Direct your attention to the note for $4,166.66, dated May 5, 1866.

A. That was paid by the company also.

(The six notes produced and referred to by the witness were here offered in evidence by Mr. Miller, and marked F G, G H, H I, I J, J K, and K L.)

Q. There are various other items referred to in schedule No. 3.

A. Yes, sir.

Q. Please state whether those items have been paid.

A. Yes, sir; they have.

Q. By whom?

A. By the company.

Q. Subsequent to what date were all the amounts paid for notes embraced in schedule No. 3? Were they all paid from June or July, 1866?

A. From about that time?

Q. They were all paid from July, 1867, up to what date?

451 A. Up to 1868. Some of these notes have only been paid last year, however.

Q. All these items have been paid by the present company as created under the act of fusion?

A. Yes, sir.

Q. Let me direct your attention to the overdraughts made by this partnership on the First National Bank; please state how the partnership treated the money derived from the First National Bank from these overdrafts. How did they consider that money and how did it appear upon the books of the partnership?

(Mr. Rouse objected on the ground that the recollection of the witness was not the best evidence, that the books themselves should be produced.)

A. It was treated as capital invested by these parties.

Q. Were you aware of any solicitation or any proposition ever having been made by Beauregard, as lessee, to the First National Bank for advances of money?

A. No, sir; I am not aware of any.

Q. In what mode was the partnership enabled to obtain the money that was got from the First National Bank upon these overdrafts, so far as your knowledge goes?

452 A. Mr. May had promised to make the overdrafts good.

Q. Are you aware of any intercourse between Genl. Beauregard, lessee, or any other officer of the company with that bank, with reference to getting that money? Did Beauregard make any application for it?

A. No, sir; not to my knowledge.

Q. Did you ever make any application for it yourself?

A. No, sir.

Q. Did the partnership of May, Graham and Beauregard keep any other bank account except this one of the First National Bank?

A. No, sir.

Q. What was the condition of the Carrollton Railroad in respect to completeness at the time of the conveyance made by May to the United States?

A. It was not entirely complete.

Q. Were you familiar with the condition of the road at that time and the expense it required to complete it?

A. I was not familiar with that department of it.

Q. In the interim between the conveyance by May to the United States in May, 1867, and the act of fusion, which was in October
453 of that year, have you any knowledge of any payments made by the United States upon this railroad or on account of it?

A. I believe they paid rent for one or two months, that was all.

Q. Do you know that to be the fact?

A. Yes, sir; I forget the time, but I know they paid it several times.

Q. All of those notes that you now produce are held by the present company?

A. Yes, sir.

Cross-examied by Mr. ROUSE:

Q. The note paid May 3d, 1867, which you have mentioned as being a mortgage note upon the Kohn property for $2,166.66, was paid by check upon the First National Bank, was it not?

A. Yes, sir; I presume so.

Q. If you know the fact of payment you know how it was paid.

A. We had no other account to get it from. I do not suppose there is any doubt that it was paid by a check on that bank.

Q. If you know the fact of payment you know how it was paid.

A. It could not have been paid in any other way.

Q. The note which you have mentioned as having been paid
454 on the 8th of May, 1867, being a mortgage note on the property purchased from W. C. Raymond, was also paid by check on the First National Bank, was it not?

A. Yes, sir; I presume that it was.

Q. What was the amount of that note with interest?

A. Forty-five hundred dollars.

Q. And also the payment made upon the horse-station property amounting to $8,666.66, was it not also paid by a check on the First National Bank?

A. Yes, sir.

Q. The partnership in the name of G. T. Beauregard, lessee, were in the habit of drawing checks on the First National Bank whenever they had occasion to do so without regard to the amount of the balance?

A. The lessee always looked at that and reported the fact to the parties that furnished the money according to the notarial agreement.

Q. Did you ever hear him make any such reports?

A. I know it to be a fact that it has been reported by the treasurer.

Q. When?

A. At some time when the overdraft began.

Q. State the time and place.

A. One time it was in September. (The witness here referred
455 to certain memoranda.)

Q. Is that memorandum in your own handwriting made at the time?

A. No, sir; it is in September that I recollect of a note being sent to Mr. May relative to the condition of the bank account at the time?

Q. Where is that note?

A. Here it is (producing paper).

Q. Is this a copy of it?

A. Yes, sir.

Q. Did you make this copy?

A. No, sir.

(Mr. Rouse objected to the introduction of the document.)

Q. Personally, you know nothing of it?

A. I only know what I heard. I had nothing to do with the furnishing of the money matters at all; I simply got my entries from the treasurer.

Q. You have heard Mr. Beauregard say that Mr. May and Mr. Graham had furnished a large amount of capital to him to carry on the partnership?

A. No, sir; I never heard him say it; I know it from the fact that they deposited money in the bank for the use of the lessee to carry on the improvements of the road; it is on the books.

Q. Do you know it in any other way?

A. No, sir; that is the only way, I believe, I knew it.

456 Q. Did you ever hear Mr. Beauregard complain that Graham or 'ay did not furnish the capital according to the contract?

A. I have heard General Beauregard's representative say so.

Q. I am not asking about his representative. Did you ever hear him himself complain that they had not furnished the capital according to agreement?

A. I have heard the treasurer complain.

Q. Did you ever hear General Beauregard complain?

A. No, sir; General Beauregard was absent during most of the time, and the treasurer had his power of attorney at one time, and Mr. May at another time. The treasurer was the only one I heard complaining.

(Signed) PETER McBRIDE.

Sworn to 4th April, 1871.

(Signed) JOHN B. WELLER,
U. S. C.

G. T. BEAUREGARD sworn and examined on behalf of the defense.

(Mr. Rouse reserved all legal objections to the testimony of this witness.)

By Mr. MILLER:

Q. You were the lessee of the New Orleans & Carrollton Rail-
457 road from the company in 1866?

A. Yes, sir.

Q. You afterwards became connected with May and Graham?

A. Yes, sir; as per act before the notary, Amadée Ducatel.

Q. How long did that connection continue with May and Graham?

A. Until May failed, and the dissolution took place.

Q. That was when?

A. I do not recollect the date now exactly. It was in May, 1867, I believe.

Q. From the date of the lease up to the dissolution of the partnership in May, 1867, will you please state what part, if any, was taken by Mr. May in the business of the partnership?

A. According to the terms of the agreement (as will be seen by reference to the agreement), he and May were to furnish all the funds necessary to carry on the concern or undertaking, up to the amount of three hundred thousand dollars, at stated amounts per month. The agreement will show that.

Q. What actual part did May take in the business of the partnership?

A. He furnished the funds according to agreement, and attended to the financial department of the concern.

458 Q. What part, if any, did Mr. Graham take in the business of the partnership.

A. That I cannot say, because he made his arrangements with Mr. May.

Q. Did he exercise any control over the partnership himself?

A. Not that I am aware of.

Q. Had you any connection with or control over the financial management of the partnership?

A. None in the least, and I did not wish to have any.

Q. What was your department during the existence of the partnership?

A. To carry out the changes necessary, or which were in contemplation on the road, and to attend to the management and reconstruction of the road.

Q. Who had the general superint'ence of the working of the road?

A. It belonged to my department, but I had a superintendent to execute my orders.

Q. Then in describing your duties you mean to say that you confined yourself to that entirely?

A. I confined myself entirely to my legitimate duties, which were to attend to the management of the concern, what might be called the outdoor management.

Q. During the existence of the partnership of May, Graham and Beauregard were there any profits made?

459 A. None at all.

Q. What was the condition of the road in respect to indebtedness in May, 1867?

A. It was indebted; the books will show to what amount.

Q. Were you compensated for your services by the partnership of May, Graham and Beauregard?

A. I received five thousand dollars a year from the receipts of the road.

Q. Did you receive any other compensation or profit from your connection with them?

A. None at all.

Q. Was your account as lessee of this railroad with the First National Bank of New Orleans opened at that bank at the instance or request of any one?

A. It was understood at the time that I was to keep the account there.

Q. Understood with whom?

A. Understood between us.

Q. Understood with whom?

A. With Mr. May and Mr. Graham.

Q. Was that bank selected by either of you or all of you? If so, by whom was it selected?

A. I have no idea; I do not recollect now by whom it was selected, but it was not selected by me; it was selected between us.

460 Q. During the existence of the partnership of May, Graham and Beauregard and during the existence of the First National Bank, had you any intercourse or communication with any of the officers of that bank in reference to furnishing the partnership with money?

A. No, sir; and I was careful not to have any, because it did not come within my province.

Q. In what mode was the partnership of May, Beauregard and Graham enabled to obtain money from that bank upon these checks?

A. By an arrangement made between Mr. May and the treasurer of the company. He authorized him to overdraw when there was no balance and promised that he would make it good.

Q. Who was the treasurer of the company?

A. Mr. S. R. Proctor, who is still treasurer.

Q. Were you consulted or had you any knowledge of that arrangement at the time?

A. I was so informed.

Q. Were you informed before the arrangement was made or after the arrangement was made?

A. After the arrangement was made.

Q. Was that arrangement made in consequence of any efforts or endeavors made by yourself?

461 A. None at all; I did not trouble myself at all about the financial department.

Q. With whom did that arrangement originate?

A. That I cannot say; not with me.

Q. On the 15th of September, 1866, were you in the city, or absent?

A. I was in Europe.

Q. When did you go and how long did you remain away?

A. I left about the beginning of May, and I did not return until about the end of October.

Q. Had you any knowledge of a credit which was entered by that bank upon a note of forty thousand dollars, drawn by Mr. May, as your per pro, at the period when the discount was made?

A. Not until my return.

Q. You became informed of it upon your return?

A. Yes, sir.

Q. You had no knowledge of that discount on that note until your return?

A. No, sir; and I was informed of it by the treasurer of the company. Mr. May did not speak to me on the subject, and has not to this day.

Q. Was that discount given by the bank in consequence of any effort made by yourself?

A. No, sir.

462 Q. When you were informed of it upon your return, did you manifest your assent or dissent to it?

A. I certainly did not approve of it; but at the same time I said nothing to Mr. May on the subject, because it did not belong to my department. I did not know what his views were. I certainly did not approve it as far as my feelings went.

Q. In reference to the transaction of the First National Bank in entering up the credit of one hundred and twenty-five thousand dollars to this partnership in March, 1867, was that credit entered up in consequence of any efforts made by yourself?

A. No, sir.

Q. Had you any knowledge of that credit being entered up at that time?

A. I had it about that time. But that was a matter which I considered entirely outside of my legitimate duties, and I did not know the condition of those gentlemen, and I did not trouble myself about it.

Q. By whose efforts or by whose means was that credit entered?

A. By Mr. May's, I have alw's understood.

463 Q. Were you made aware at the time of the mode in which he proposed to get that credit?

A. All that I know on the subject is that the treasurer told me that he was authorized by Mr. May to overdraw, and that he (May) would make the overdraft good.

Q. Then you had no knowledge of the mode in which May got that credit from the bank?

A. Not in the least. I thought Mr. May and Mr. Graham rich men all the time. I had not the least idea of the arrangements they were making with the bank. That was the reason I went into the partnership with them. I had no means of my own, and they were reported to be rich men, and of course I made an arrangement with them as I could have done with other parties.

Q. Was any proposition made to you by either one of your partners that you should become personally responsible for those moneys that were drawn from the bank?

A. No, sir.

Q. Did you ever make yourself responsible in any way, unless the law made you responsible?

A. No, sir.

464 Q. How did you consider the money obtained from the First National Bank? How did you treat it?

A. I considered that it was money which Mr. May had furnished to the concern or that he was bound to furnish to the concern.

Q. Have you any knowledge of being sent for on the morning of the day when that credit of one hundred and twenty-five thousand dollars was entered?

A. No, sir.

Q. Were you consulted about it on that morning?

A. No, sir.

Q. Have you any knowledge of going to the First National Bank on the occasion that credit was entered or being sent for by the bank?

A. I was not sent for. I used to go there about once or twice a month according to circumstances, but I have no recollection of being sent for. I have no recollection of going there at that time, and I certainly was not sent for.

Q. Was that a subject of conversation between you and Mr. May and Mr. Graham?

A. No, sir; these were matters that I left entirely with Mr. May and the treasurer, and I did not consider it my duty to interfere with them.

465 Q. At the date of the act of fusion in October, 1867, were you familiar with the then condition of this railroad?

A. Yes, sir.

Q. Was it complete or incomplete?

A. It was incomplete.

Q. What amount (if you can form an opinion, or if you know it of your own knowdedge) was requisite to complete the road?

A I cannot say the amount, but I will state that it was in a very incomplete condition; it would require a very large amount. It was not completed until long after the fusion. We were still at work at the horse cars.

Cross-examined by Mr. ROUSE:

Q. You say that the treasurer informed you that he was authorized to overdraw from the First National Bank for the use of the partnership?

A. Yes, sir.

Q. You did not dissent from his overdrawing on that occasion?

A. No, sir; I considered that I had nothing to do with it except to carry out the arrangement that I had made.

Q. You knew the fact that overdrafts were made?

A. Yes, sir; I was aware of that.

Q. The treasurer was under your supervision, was he not?

A. Under my general supervision to attend to the monetary department.

Q. He was under your supervision in your capacity as manager and superintendent of the road?

A. Yes, sir; he was appointed with the consent of my partners.

Q. You knew the fact of the treasurer overdrawing to the amount of two hundred and thirty-seven thousand dollars, did you not?

466 A. I do not know the amount. I knew that he had overdrawn.

Q. You knew the amount at the time, although you do not remember it now?

A. I cannot say that I knew it immediately at the time, because I seldom troubled myself with the financial department. I knew that it was overdrawn, but I cannot state the amount. I suppose the books will show what the amount of the overdraft was. I want you to understand that I had nothing to do with the financial department. Mr. May attended to it.

Q. When you learned of the discount of the note for forty thousand dollars you did not go to May and protest against it, did you?

A. No, sir; but I thought it a very singular act.

Q. You did not express your disapproval of it?

A. No, sir; not to him.

Q. He held your power of attorney, did he not?

A. I stated that I thought that it was a singular proceeding on his part, and that I thought it did not come within the meaning of his power of attorney. I did not approve of the thing being done, but I did not say so to him.

Q. You did not communicate your dissent to him in any way?

467 A. No, sir; I so expressed myself to the treasurer. I do not know whether he informed him of it or not.

Q. Has there ever been any formal dissolution of the co-partnership existing between you and May and Graham, by notarial or private act?

A. Not that I know of, except by the sale of the government?

Q. Not by any act between you?

A. No, sir; only by the act of the government—by the seizure and transfer.

Q. Mr. Graham furnished a large proportion for carrying on the partnership, did he not?

A. I do not know; the books will show.

Q. Did he not pay money to you?

A. Never to me.

Q. Or to your treasurer, with your knowledge?

A. That I cannot say. The treasurer will answer for himself.

Q. Were you not present when he paid money on property purchased through your negotiations?

A. No, sir; never. I never heard of their embarrassed condition until they had failed.

Q. Do you know what the credit at the opening of the account of Beauregard, lessee, with the First National Bank, on the 16th April, 1866, amounting to $20,000, was composed of?

468 A. No, sir; I do not.

Q. Do you know what the credit of May 4th, 1866, for twenty thousand dollars, was composed of?

A. I have not the least idea?

Q. Have you any knowledge of any of the credits?

A. Not that I know of.

Q. The treasurer superintended the deposits?

A. Yes, sir.

Q. What was his name?

A. S. R. Proctor. I did not attend to the treasury department. When I was carrying on the works for the United States it was the same system. That was the understanding and arrangement. I knew that we could make a very good thing of it, and thought that they had capital. I have been carrying on works of that kind twenty years. They furnished the money and I carried them on. I furnished a monthly statement of receipts and expenditures, so as to keep them in form.

Q. Graham may have made payments on account of his capital which were deposited in this account?

A. Yes, sir; he may have done so.

Q. If he did not make any such payments, it would not be known

469 to you as a fact, except through the medium of the treasurer or his accounts?

A. Through my treasurer.

Q. Have you the checks which were drawn by the firm upon the First National Bank of New Orleans in your possession or under your control?

A. I cannot say; they may be on file in the office.

Q. Will you examine the files and see if you can produce them?

A. Yes, sir; I will do so.

(Mr. Miller promises to produce the checks called for at the same time that he shall place upon the witness stand Mr. S. R. Proctor, the treasurer, referred to.)

Q. Was not the forty thousand dollars which was obtained by the discount of that note in September used for the purposes of the partnership?

A. In September I was not here; I was in Europe.

Q. Do you not know that to be the fact? Was not all the money which was drawn by the overdraft used in the business of the road?

A. Yes, sir. I will state that some of it was used in purchasing the hotel in Carrollton, to the taking of which I had objected before
470 I left for Europe. When I returned I found that the thing had been completed. Whether the forty thousand dollars went to that or not I do not know. All the money which was drawn from the bank was applied to the business of the partnership.

Q. You were not to have any interest in the property or profits until May's and Graham's expenditures were repaid, with interest?

A. Yes, sir; with eight per cent. interest. Then we were to begin to divide the profits one-third each.

Q. Did you put any funds in the road yourself?

A. No, sir; I only put in my labor and attention and time.

Q. What have you realized from it in addition to your salary of five thousand dollars a year?

A. Not one cent. If they had only stuck to their agreement they would have to divide about one hundred thousand dollars this year. I would have paid them all the money that they advanced, and we would have at least seventy-five thousand dollars to divide among us.

Q. Who received compensation from the one-third of partner-
471 ship property which was transferred as belonging to you under the act of fusion to the Carrollton Railroad Company?

A. Under the act of fusion I was to come in for my third after certain advances made by the new purchasers and May's and Graham's share were entirely satisfied. I was not to get that in cash, but I was to get it in stock. Practically, I got nothing. There was nothing left to divide with me; therefore I was put to all my trouble there for nothing.

(Signed) G. T. BEAUREGARD.

Sworn to 4th April, 1871.

(Signed) JOHN B. WELLER, *U. S. C.*

I do hereby certify that the foregoing depositions of Peter McBride and G. T. Beauregard were taken before me and reduced to writing, first in hieroglyphics, by C. W. Colton, a stenographer, and that on the 15th April, 1871, the said Colton appeared before me, and on solemn oath declared that they were in all respects true and correct translations from the original notes thus taken.

Given under my hand and official seal this 15th April, 1871, at
472 the city of New Orleans, State of Louisiana.

[SEAL.] (Signed) JOHN B. WELLER.

U. S. Commissioner & Master in Chancery.

Testimony taken before Hon. J. B. Weller, U. S. Commissioner.

NEW ORLEANS, *April 10th*, 1871.

Present:

For complainant, J. D. Rouse, esq.
" Jos. Hernandez
" Geo. Binder,
" Alex. Bonneval, } H. C. Miller, esq.
" G. T Beauregard,
" Carrollton R. R. Co.,
" 4th Nat'l B'k of N. Y., W. W. King, esq.
" United States, J. W. Gurley, "

G. T. BEAUREGARD recalled on behalf of the defense.

By Mr. MILLER:

Q. On the 10th of July, 1869, did you own any shares in the Carrollton Railroad Company? If so, how many shares?

A. (After referring to books of the Carrollton R. R. Co.) I owned twenty shares at that time.

Q. What had become of those shares of stock which you acquired under the act of fusion?

473 A. They must have been transferred back to the company. I was never put in actual possession of the shares. A certain proportion of them were to be mine in a certain event.

(Mr. Rouse objected to any parole evidence tending to vary the contract between the witness and the New Orleans and Carrollton Railroad Company and others, known as the act of fusion and annexed to complainants bill, marked Exhibit L.)

Q. What had become of the proportion of stock which you had acquired under the act of fusion?

A. It had been transferred back to the company.

Q. Do you mean that your shares were transferred back to the company or to any other parties? Who do you mean by the company?

A. They were transferred back to my associates. The stock had been placed to my credit for certain purposes.

Q. You say that the stock had been transferred back to your associates; please name them.

A. Mr. Alexander Bonneval, Mr. G. W. Binder, and Mr. Joseph Hernandez.

474 By Mr. ROUSE:

Q. Was that transfer in writing?

A. It was transferred on the books of the company.

(Mr. Rouse objected to any parole testimony of the tansfer.)

By Mr. MILLER:

Q. The books will show that transfer that you speak of, will they not?

A. I suppose so.

Q. Had you ever any actual interest in those shares of stock which were acquired by the purchasers, Hernandez, Binder, Bonneval, and yourself under the act of fusion?

(Mr. Rouse objected to the question on the ground that it was an attempt to vary the written contract.)

A. None at all.

Q. Please state what the agreement was between Hernandez, Binder,

Bonneval, and yourself in relation to those shares of stock which you acquired under the act of fusion?

(Mr. Rouse objected to the question on the same ground as that stated in his objection to the previous question.)

475 A. They were placed in my name, with the understanding that if after the settlement of the fusion there should be a balance to my credit I should receive that balance, not otherwise.

Q. After the settlement of the fusion? What do you mean by that?

A. After the settlement of the agreement between the old company and our association.

Q. If there should be any balance, then what?

A. I was to receive my proportion.

Q. But there was no balance.

A. There was no balance.

Q. So that you got nothing from them.

A. So that I got nothing from them.

Q. All these shares of stock which you had acquired under the act of fusion had been transferred to Hernandez, Binder, and Bonneval before this suit was brought?

A. Yes, sir.

Cross-examined by Mr. ROUSE:

Q. Was that agreement which you speak of, between yourself and Binder, Bonneval, and Hernandez, in writing?

A. I do not now recollect.

Q. When was the agreement made that you were not to receive any stock unless certain conditions were fulfilled?

476 A. At the time of the purchase from the government.

Q. In August, 1867?

A. Whatever the date of the purchase is; I do not now remember the date exactly.

Q. It was at the time the contract was made?

A. It was at the time the sale was made from the government by Mr. Bell. I do not recollect the date.

Q. Can you produce the stock transfer book of the New Orleans and Carrollton Railroad Company to show when these transfers of your stock by you were made?

A. (Producing said book.) The book will speak for itself. These are the entries in this book by which I transferred my stock to those gentlemen (referring to transfers Nos. 121, 122, 123, 299, 300, and 301, which said entries were offered in evidence by Mr. Miller, copies whereof are hereto annexed, pages 496–499 of this transcript).

By Mr. MILLER:

Q. Did you receive any consideration for this transfer of stock?

A. None at all, unfortunately.

(It was agreed that the entries referred to by the witness shall
477 be copied, and said copies annexed hereto, the right being reserved to produce the originals.)

By Mr. ROUSE:

Q. Is that book, within your knowledge, the original stock transfer book of that company?

A. Yes, sir, and it shows the transactions that I refer to.

(Signed) G. T. BEAUREGARD.

Sworn to this 10th April, 1871.

(Signed) JOHN B. WELLER, *U. S. C.*

JOSEPH HERNANDEZ sworn and examined on behalf of the defense.

By Mr. MILLER:

(Mr. Rouse reserved the same objection to the testimony of this witness that he had reserved to that of G. T. Beauregard, *i. e.*, he could not give testimony for his co-defendants.)

Q. What stock of the Carrollton Railroad Company, if any, did you own on the 10th day of July, 1869?

A. Well, sir, I don't know. I don't think I owned much. I had sold out pretty much all I possessed.

Q. Can you state the number of shares that you owned at that date?

A. I could not tell exactly, it is too vague in my memory. I
478 don't think I owned but just what was necessary to be a director; about twenty-five shares or something in that neighborhood, so far as I remember. I know that I have owned that number of shares about two years, no more.

Q. You are pretty certain that the number did not exceed twenty-five?

A. I don't think it exceeded twenty-five.

Q. Can you refer to any book to make the matter certain?

A. By referring to the stock book you will find it out.

Q. Just refer to that book and state what it was.

A. (After referring to said book.) The book shows that I owned twenty shares at that time.

(Mr. Rouse objected to any testimony as to the book shown to the witness, unless the entries therein are in the handwriting of the witness.)

Q. Are you able to state that fact of your own knowledge after looking at the book?

A. Of course I am.

Q. What had become of those shares of stock which you had acquired under the act of fusion?

A. They went into the fusion.

479 Q. What had you done with them? You had acquired a certain part of them; what had you done with that part?

A. I sold them.

Q. Prior to the 20th of July, 1869?

A. Yes, sir; I sold them and a good many others besides, because I had been buying and selling.

Q. You had been paid for those shares before that date?

A. Yes, sir.

Q. And the sales made by you are shown by the transfer book?

A. Yes, sir; you can see that I have made a large amount of transfers.

Q. Did you own any shares of stock prior to the act of fusion?

A. Yes, sir.

Q. About how many?

A. As far as I can remember it was about two or three hundred shares. I have owned as much as seven or eight hundred shares.

Q. Are you pretty certain that you owned two or three hundred shares before the fusion?

A. Yes, sir, so far as I recollect; it is so long ago.

Cross-examined by Mr. ROUSE:

Q. Can you state from your own recollection when you sold
480 this stock which was transferred to you under the act of fusion?

A. Well, I did not sell it immediately afterwards, but I think it was within two or three months after the fusion that I sold it. I remember distinctly that I had a payment to make for those notes, and I sold the stock, say three or four hundred shares, to make the payments on that paper.

(Signed) J. HERNANDEZ.

Sworn to this 10th April, 1871.

(Signed) JOHN B. WELLER, *U. S. C.*

ALEXANDER BONNEVAL sworn and examined on behalf of the defence.

By Mr. MILLER:

(Mr. Rouse reserved the same objection to the testimony of this witness that he had reserved to that of G. T. Beauregard and Joseph Hernandez.)

Q. How many shares of stock of the New Orleans and Carrollton Railroad Company did you own on the 10th of July, 1869?

A. Well, sir, I did not own any.

Q. What had become of the stock which you had acquired under the act of fusion?

481 A. I had sold it, sir.

Q. And had been paid for it?

A. Yes, sir.

Q. You had been paid for it prior to the 10th day of July, 1869?

A. Yes, sir.

Cross-examined by Mr. ROUSE:

Q. How long prior to the 10th day of July, 1869, had you sold your shares in the Carrollton R. R. Co.?

A. I could not state. I had in the mean time bought and sold as a broker, and as I had a large payment to make to the government I disposed of my stock so as to help that payment. When I say that I owned none in my own name I mean that I owned none personally. In the latter part of the time we had the firm of A. Bonneval & Co., which owned some few shares, but in my own personal name I did not own any.

Q. How many shares did your firm own?

A. I do not recollect.

Q. Did they own about twenty or twenty-five shares?

A. About that much.

Q. Please look at the book of the company and see if you can

482 state how many they were.

A. (After referring to book.) The firm of A. Bonneval & Co. owned twenty shares on the 10th of July, 1869.

Q. Did you own any shares of stock prior to the act of fusion?

A. I think I did but I could not recollect just now, not having my books before me. I think I owned some fifty or eighty shares then, maybe a hundred shares.

Q. That is your impression now?

A. Yes, sir; that is my impression now.

(Signed) ALEX. BONNEVAL.

Sworn to this 10th April, 1871.

(Signed) J. B. WELLER,
U. S. Com.

GEORGE BINDER sworn and examined on behalf of the defense.

By Mr. MILLER:

Q. On the 10th of July, 1869, how many shares of stock of the New Orleans and Carrollton Railroad Company did you own?

A. Individually I held none.

Q. Had you any interest in any owned by your firm?

A. Yes, sir.

Q. How many did your firm own on that date?

A. (After referring to book.) I see by the book that we owned twenty-two shares.

483 Q. What had become of the shares of stock that you had acquired under the act of fusion?

A. I transferred them to my firm, and the firm sold them.

Q. Had all the shares acquired by you under the act of fusion been sold and paid for prior to the 10th of July, 1869?

A. Yes, sir.

Cross-examined by Mr. ROUSE:

Q. How long before the 10th of July, 1869, did you sell your shares?

A. They were sold slowly in some five or six or seven months, or a year. The transfer book and the ledger will show that all were sold all the time; that was our business.

(Signed) G. W. BINDER.

Sworn to this 10th April, 1871.

(Signed) JOHN B. WELLER, *U. S. C.*

PETER MCBRIDE recalled on behalf of the defense.

By Mr. MILLER:

Q. You were the secretary of the Carrollton Railroad Company in 1867, 1868, & 1869, and up to the present time?

A. I assumed the secretaryship in December, 1867. Mr. Evans was there previously.

484 Q. You were in their employ during that time?

A. Yes, sir, as book-keeper.

Q. Will you produce the transfer book of that company?

(The witness produced the book called for.)

Q. State what period it embraces?

A. Well, it dates back previous to the fusion. It goes down to January 13, 1869, and commences at August 23, 1867.

Q. Does this transfer book show all the transfers made by Alexander Bonneval, Geo. Binder, and Joseph Hernandez, and G. T. Beauregard of the stock acquired by them under the act of fusion?

A. Yes, sir.

(Mr. Miller offered said transfer book in evidence, to show the transfers made by Binder, Bonneval, Hernandez, and Beauregard of the stock acquired by them under the act of fusion, and it was agreed that the requisite extracts should be copied therefrom, in order to avoid placing the whole book in the record.)

Cross-examined by Mr. ROUSE:

485 Q. Was this book kept, and these transfers of stock made in it at the several dates affixed to them?

A. Yes, sir.

Q. Was there any other transfer book kept during the same period of time by said company?

A. No, sir.
(Signed) P. McBRIDE.

Sworn to this 10th April, 1871.
(Signed) JOHN B. WELLER, *U. S. C.*

I do hereby certify that the foregoing depositions of G. T. Beauregard, Joseph Hernandez, Alexander Bonneval, George Binder, and Peter McBride were taken before me at the time and place therein named, and were reduced to writing by C. W. Colton, a stenographer, and that said Colton afterward, to wit, on the 15th April, 1871, appeared before me and on solemn oath declared that they were in all respects correct translations from the original notes thus taken.

Given under my hand and official seal at New Orleans this 15th April, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. Com. and Master in Chancery.

486 *Documents received from Hon. J. B. Weller, examiner, and filed with testimony April 17th*, 1871.

Transfers of stock from G. W. Binder to Lessassier & Binder.

No. 4.] NEW ORLEANS, *Nov.* 7, 1867.

For value received, I hereby transfer unto Lessassier & Binder all my right, title, and interest in tw' hundred & fifty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which is paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

No. 23.] NEW ORLEANS, 25 *November*, 1867.

For value received, I hereby transfer unto Lessassier & Binder all my right, title, & interest in one hundred & sixty-seven shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

No. 153.] NEW ORLEANS, *March 2d*, 1868.

487 For value received I hereby transfer unto Lessassier & Binder all my right, title, & interest in 435 shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
P. McBRIDE.

G. W. Binder to Felix A.

No. 5.] NEW ORLEANS, *Nov.* 7, 1867.

For value received I hereby transfer unto Felix A. all my

right, title, and interest in two hundred & fifty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

G. W. Binder to F. A. Ducros.

No. 22.] NEW ORLEANS, 25 *November*, 1867.

For value received I hereby transfer unto F. A. Ducros all my right, title, and interest in one hundred & sixty-seven shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon
488 which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH. J. EVANS.

Transfers of stock from Alex. Bonneval to Bonneval & Dolhonde.

No. 133.] NEW ORLEANS, 26 *Feb'y*, 1868.

For value received I hereby transfer unto Messrs. Bonneval & Dolhonde all my right, title, and interest in two hundred & eighty-eight shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

No. 175.] NEW ORLEANS, *March* 6, 1868.

For value received I hereby transfer unto Messrs. Bonneval & Dolhonde all my right, title, and interest in ninety shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

No. 347.] NEW ORLEANS, *Oct.* 2, 1868.

489 For value received I hereby transfer unto Messrs. Bonneval & Dolhonde all my right, title, and interest in twelve shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:

Alex. Bonneval to A. Bonneval & Co.

No. 378.] NEW ORLEANS, *Nov.* 18*th*, 1868.

For value received I hereby transfer unto A. Bonneval & Co. all my right, title, and interest in forty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to John Dolhonde.

No. 361.] NEW ORLEANS, 27*th Oct.*, 1868.

For value received I hereby transfer unto John Dolhonde all my right, title, and interest in twenty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

490 A. Bonneval to .

No. 15.] NEW ORLEANS, *November* 15*th*, 1867.

For value received I hereby transfer all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
RICH. J. EVANS.

A. Bonneval to Dr. W. N. Mercer.

No. 30.] NEW ORLEANS, *Dec. 3d*, 1867.

For value received I hereby transfer unto Dr. Wm. Newton Mercer all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to A. F. Avegno.

No. 63.] NEW ORLEANS, *Jan'y* 16*th*, 1868.

For value received I hereby transfer unto A. F. Avegno all my right, title, and interest in twenty-eight shares of the capital stock of
491 the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to A. J. Avegno.

No. 62.] NEW ORLEANS, *Jan'y* 16*th*, 1868.

For value received I hereby transfer unto A. J. Avigno all my right, title, and interest in seventy-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to Mrs. Mary M. Converse.

No. 112.] NEW ORLEANS, 13*th Febr'y*, 1868.

For value received I hereby transfer unto Mrs. Mary M. Converse all my right, title, and interest in fifteen shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to L. W. Baquié.

No. 116.] NEW ORLEANS, *Febr.* 19*th*, 1868.

492 For value received I hereby transfer unto Mr. L. W. Baquié all my right, title, and interest in twelve shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to Mrs. L. W. Bohn.

No. 125.] NEW ORLEANS, 21*st Febr'y*, 1868.

For value received I hereby transfer unto Mrs. L. W. Bohn all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to J. C. Denis.

No. 130.] NEW ORLEANS, *Febr'y* 26*th*, 1868.

For value received I hereby transfer unto J. C. Denis all right, title, and interest in twenty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

493 A. Bonneval to Arthur Kohn.

No. 173.] NEW ORLEANS, 6 *March*, 1868.

For value received I hereby transfer unto Arthur Kohn all my right, title, and interest in ten shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to J. W. Burbridge & Co.

No. 220.] NEW ORLEANS, *April 8th*, 1868.

For value received I hereby transfer unto J. W. Burbridge & Co. all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to W. P. Converse, sen'r.

No. 309.] NEW ORLEANS, *3d August*, 1868.

For value received I hereby transfer unto Wm. P. Converse, sen'r all my right, title, and interest in fifty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon
494 which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to H. P. Janvier.

No. 320.] NEW ORLEANS, *Aug. 18th*, 1868.

For value received I hereby transfer unto H. P. Janvier, esq., all my right, title, and interest in ten shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to W. A. Gasquet.

No. 344.] NEW ORLEANS, *Sept. 18th*, 1868.

For value received I hereby transfer unto W. A. Gasquet all my right, title, and interest in fifty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to J. B. McGehee.

No. 349.] NEW ORLEANS, *Oct. 5th*, 1868.

495 For value received I hereby transfer unto J. Burruss McGehee all my right, title, and interest in five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

A. Bonneval to J. B. McGehee.

No. 356.] NEW ORLEANS, *Oct.* 15*th*, 1868.

For value received I hereby transfer unto J. Burruss McGehee all my right, title, and interest in eleven shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to Chas. E. Fenner.

No. 370.] NEW ORLEANS *Nov.* 5*th*, 1868.

For value received I hereby transfer unto Chas. E. Fenner all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to J. W. Black.

496 No. 377.] NEW ORLEANS, *Nov.* 13, 1868.

For value received I hereby transfer unto J. W. Black all my right, title, and interest in ten shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

A. Bonneval to A. Griffo.

No. 440.] NEW ORLEANS, *Jan'y* 30*th*, 1869.

For value received I hereby transfer unto A. Griffo all my right, title, and interest in two shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

G. T. Beauregard to A. Bonneval.

No. 123.] NEW ORLEANS, *Febr'y* 21*st*, 1868.

For value received I hereby transfer unto Alex'r Bonneval all my right, title, and interest in three hundred and seventy-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

497 Witness:
P. MCBRIDE.

G. T. Beauregard to George Binder.

No. 121.] NEW ORLEANS, *Febr'y* 21*st*, 1868.

For value received I hereby transfer unto Geo. Binder all my right, title, and interest in three hundred and seventy-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

G. T. Beauregard to J. Hernandez.

No. 122.] NEW ORLEANS, *February* 21*st*, 1868.

For value received I hereby transfer unto Jos. Hernandez all my right, title, and interest in three hundred and seventy-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

No. 299.] NEW ORLEANS, *July* 23*d*, 1868.

For value received I hereby transfer unto Jos. Hernandez all my right, title, and interest in sixty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which
498 are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

G. T. Beauregard to Lessassier & Binder.

No. 300.] NEW ORLEANS, *July* 23*d*, 1868.

For value received I hereby transfer unto Lesassier & Binder all my right, title, and interest in sixty-five shares in the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

G. T. Beauregard to A. Bonneval.

No. 301.] NEW ORLEANS, *July* 23*d*, 1868.

For value received I hereby transfer unto Alex'r Bonneval all my right, title, and interest in sixty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

Transfer of stock from Jos. Hernandez to P. N. Avegno.

No. 9.] NEW ORLEANS, *Nov.* 11*th*, 1867.

499 For value received I hereby transfer my right, title, and interest in sixty-four shares of the capital stock of New Orleans and

Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ,
P. pro. S. RICH'D PROCTOR.

Witness:
RICH'D J. EVANS.

I hereby authorize S. R. Proctor, esq., to transfer to P. N. Avegno sixty-four shares of the Carrollton Railroad Company (one hundred dollars paid), now standing on the book of the company in my name.
64 shares.

J. HERNANDEZ.

J. Hernandez to E. Martin & Co.

No. 10.] NEW ORLEANS, *Nov.* 11*th*, 1867.

For value received I hereby transfer unto E. Martin & Co. all my right, title, and interest in 166 shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

J. HERNANDEZ,
P. pr. S. RICH. PROCTOR.

Witness:
RICH. J. EVANS.

I hereby authorize S. R. Proctor, esq., to transfer to E. Martin & Co. one hundred sixty-six shares of the Carrollton Railroad Company (one hundred dollars paid), now standing on the books of the company in my name.
500

J. HERNANDEZ.

(The word hundred in the second line added.)

J. HERNANDEZ.

166 shares.

No. 21.] NEW ORLEANS, 25 *November*, 1867.

For value received I hereby transfer unto E. Martin & Co. all my right, title, and interest in one hundred and eleven shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER,
P. pr. JOS. HERNANDEZ.

Witness:
RICH. J. EVANS.

No. 128.] NEW ORLEANS, *Feb'ry* 24*th*, 1868.

For value received I hereby transfer unto Eug. Martin & C. all my right, title, and interest in one hundred & forty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

No. 302.] NEW ORLEANS, *July* 25*th*, 1868.

For value received I hereby transfer unto E. Martin & Co. all my

right, title, and interest in twenty-two shares of the capital stock
501 of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

Jos. Hernandez to Geo. Jonas.

No. 48.] NEW ORLEANS, *Dec'r 28th*, 1867.

For value received I hereby transfer unto Geo. Jonas, esq., all my right, title, and interest in twenty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
PETER McBRIDE.

Jos. Hernandez to W. F. Chapman.

No. 49.] NEW ORLEANS, *Dec'r 31st*, 1867.

For value received I hereby transfer unto W. F. Chapman, esq., all my right, title, and interest in thirty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
PETER McBRIDE.

J. Hernandez to George Palfrey.

No. 56.] NEW ORLEANS, *Jan'y 9*, 1868.

502 For valve received I hereby transfer unto George Palfrey all my right, title, and interest in twenty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

Jos. Hernandez to Henry W. Palfrey.

No. 57.] NEW ORLEANS, *Jan'y 10th*, 1868.

For value received I hereby transfer unto Henry W. Palfrey, esq., all my right, title, and interest in one hundred and forty-four shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to L. E. Lemarie.

No. 79.] NEW ORLEANS, *Jan'y 24th*, 1868.

For value received I hereby transfer unto L. E. Lemarie, esq., all my

right, title, and interest in one hundred & twenty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

503 J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to J. W. Burbridge & Co.

No. 80.] NEW ORLEANS, *Jan'y 24th*, 1868.

For value received I hereby transfer unto J. W. Burbridge & Co. all my right, title, and interest in fifty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

Jos. Hernandez to T. F. Gwathmey.

No. 108.] NEW ORLEANS, *Febr'y 12th*, 1868.

For value received, I hereby transfer unto T. F. Gwathmey all my right, title and interest in thirty shares in the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to S. M. Westmore.

No. 124.] NEW ORLEANS, *Febr'y 21st*, 1868.

For value received, I hereby transfer unto S. M. Westmore,
504 esq., all my right, title, and interest in sixteen shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Dominique Lanata.

No. 126.] NEW ORLEANS, 21*st Febr'y*, 1868.

For value received, I hereby transfer unto Dominique Lanata, esq., all my right, title, and interest in fifty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Pablo Gelpi, sr.

No. 127.] NEW ORLEANS, *Febr'y 21st*, 1868.

For value received, I hereby transfer unto Pablo Gelpi, sr., esq., all

my right, title, and interest in fifty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

505 Jos. Hernandez to F. A. Ducros.

No. 129.] NEW ORLEANS, *Febr'y 24th*, 1868.

For value received I hereby transfer unto F. A. Ducros, esq., all my right, title, and interest in one share of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

No. 143.] NEW ORLEANS, *Febr'y 28th*, 1868.

For value received I hereby transfer unto F. A. Ducros, esq., all my right, title, and interest in twenty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Lesassier & Binder.

No. 132.] NEW ORLEANS, *Febr'y 26th*, 1868.

For value received I hereby transfer unto Lessassier & Binder all my right, title, and interest in thirty-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

506 J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Philip Manondet.

No. 144.] NEW ORLEANS, *Febr'y 28th*, 1868.

For value received I hereby transfer unto Philip Manondet, esq., all my right, title, and interest in twenty-five shares in the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to S. McConnell.

No. 160.] NEW ORLEANS, *March 4th*, 1868.

For value received I hereby transfer unto S. McConnell all my right, title, and interest in fifty shares of the capital stock of the New Orleans

and Carrollton Railroad Company upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Dr. Wm. N. Mercer.

No. 196.] NEW ORLEANS, *March 6th*, 1868.

For value received I hereby transfer unto Dr. Wm. N. Mercer
507 all my right, title, and interest in one hundred & fifty shares of the capital stock of the New Orleans and Carrollton Railroad Company upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Juliana W. Bland.

No. 319.] NEW ORLEANS, *Aug. 18th*, 1868.

For value received I hereby transfer unto Juliana W. Bland all my right, title, and interest in ten shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to C. E. Fenner.

No. 390.] NEW ORLEANS, *Nov. 27th*, 1868.

For value received I hereby transfer unto Mr. C. E. Fenner all my right, title, and interest in ten shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

508 J. Hernandez to J. C. Brown.

No. 425.] NEW ORLEANS, *Jan'y 22d*, 1869.

For value receive' I hereby transfer unto J. C. Brown all my right, title, and interest in thirty-four shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Thos. C. Brown.

No. 430.] NEW ORLEANS, *Jan'y 23d*, 1869.

For value received I hereby transfer unto Thos. C. Brown all my

right, title, and interest in seventy-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

J. Hernandez to Alex'r Bonneval & Co.

No. 504.] NEW ORLEANS, *April 17th*, 1869.

For value received I hereby transfer unto Alex'r Bonneval & Co. all my right, title, and interest in five shares of the capital stock of
509 the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

Documents E F, F G, G H, H I, I J, J K, K L, L M, M N, N O, O P, P Q, Q R, R S, S T, T U, U V, V W, W X, and Y Z.—Filed with testimony April 17, 1871.

Note marked E F.

$2,666.66⅔, 2,880.00.] NEW ORLEANS, *30th April*, 1866.

One year after date we promise to pay to the order of ourselves the sum of two thousand six hundred & sixty-six $\frac{66\frac{2}{3}}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum from date until paid.

(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.

(On the margin:) Amadee Ducatel, notary public.
(Across the face:) Ne varietur.

In conformity with an act before me, dated this day, duly stamped. N. O., 30th April, 1866.

AMEDEE DUCATEL.

(Also across the face:) Cancelled.

(Across the signatures:) Cancelled.

Paulin Durel, printer, 37 Chartres st.

(Endorsed:)

MAY 3, '67.

Note for 2,880.00, including interest.

(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.

(Across the signatures:) Cancelled.

(Endorsed, also:)

(Signed) 1. G. T. BEAUREGARD.
" 2. A. C. GRAHAM.
2880.

3 May.

510 Note marked F G.

$4166.66⅔.] NEW ORLEANS, *May*, 1866.

Two years after date we promise to pay to the order of ourselves the sum of four thousand one hundred & sixty-six $\frac{66}{100}$ dollars for value received, with interest at the rate of eight per centum from date until paid.

(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.

(On the margin:) Amadee Ducatel, notary public.
(Across the face:) Ne varietur.
In conformity with an act before me, dated this day, duly stamped.
N. O. 5th May, 1866.

AMEDEE DUCATEL.

Paulin Durel, printer, 37 Chatres st.

(Endorsed:)
$4166.66⅔. April 7th, '69.

(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.

I subrogate to all the rights and interests which I have in and to the within note.

(Signed) W. C. RAYMOND.

NEW ORLEANS, *May 8th*, 1868.

Rec'd interest in full to May 5th, 1869, & renewed to that date.

W. C. RAYMOND.

Note marked G H.

Int. $426.66
2666.66⅔
$3093.32

NEW ORLEANS, *30th April*, 1866.

511 Two years after date we promise to pay to the order of ourselves the sum of two thousand six hundred & sixty-six $\frac{66}{100}$ dollars, for value received, with interest at the rate of eight per centum per annum from date until paid.

(Signed) G. T. BEAUREGARD.
T. P. MAY.
A. C. GRAHAM.

(On the margin:) Amedee Ducatel, notary public.
(Across the face:)
In conformity with an act before me, dated this day, duly stamped.
N. O., April, 1866.

AMEDEE DUCATEL.

(Also across the face:) Cancelled.
(Across the signatures:) Cancelled.
(Endorsed:) Paid May 1st, 1868.
(Endorsed also:) (Signed) G. T. BEAUREGARD &
" A. C. GRAHAM.

3093.32. May 3, '68.
(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.
" T. BAILLY BLANCHARD, JR.

Note marked H I.

$4,333.33\frac{1}{3}$.] NEW ORLEANS, *December 17th*, 1866.

Two years after date I promise to pay to the order of Thomas P. May, at the Canal Bank, in this city, the sum of forty-three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

G. T. BEAUREGARD,
Lessee.

(On the margin:) Gottschalk & Magner, notarial office, No. 158 Common st., New Orleans.

(Across the face:)
No. 2. Ne varietur.
Secured by mortgage, duly stamped, $26.
New Orleans, 1st Jan'y, 1867.

S. MAGNER,
Not. Public.

(Across the signature:) Cancelled.
(Endorsed:) (Signed) G. T. BEAUREGARD,
Lessee.

512 $5,026.67. Dec. 20.
(Signed) T. P. MAY,
For N. O. & Carrollton R. R. Co.
G. CURRIE DUNCAN,
Pres't.

(Endorsed also:)

N. O., *December* 19, 1868.

By mutual consent payment of the within note for five thousand and twenty-six $\frac{67}{100}$ dollars is extended to the 19th December, 1869, interest thereon having been paid in advance.

(Signed) G. T. BEAUREGARD,
President.

Oct. 9th, 1869.

B. P. Paid this day 5,026.67.

Note marked I J.

$5,026.67, 4,333.33\frac{1}{3}$.] NEW ORLEANS, *December 17th*, 1866.

Two years after date I promise to pay to the order of Thomas P. May, at the Canal Bank of this city, the sum of forty-three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

(Signed) G. T. BEAUREGARD,
Lessee.

(On the margin:) Gottschalk & Magner, notarial office No. 158 Common st., New Orleans.

(Across the face:)
No. 1. Ne varietur.

Secured by mortgage, duly stamped, $26.
New Orleans, 15th Jan'y, 1867.

S. MAGNER,
Not. Public.

(Across the signature:) Cancelled.

(Endorsed:)
2683.
(Signed) G. T. BEAUREGARD,
Lessee.

5,026.67. Dec. 20.
(Signed) T. P. MAY,
For N. O. & Carrollton R. R. Co.
G. CURRIE DUNCAN,
Pres't.

513 (Endorsed also:) N. ORLEANS, *Dec. 19th*, 1868.

By mutual consent payment of the within note for five thousand and twenty-six $\frac{67}{100}$ is extended without reservation to the 19th December, 1869, interest thereon having been paid in advance.

G. T. BEAUREGARD,
President.

Oct. 9th, 1869. B. P. Paid this day, $5,026.67.

Note marked J K.

$4,680.00, 4,333.33⅓.] NEW ORLEANS, *December* 17, 1866.

One year after date, I promise to pay to the order of Thomas P. May, at the Canal Bank, in this city, the sum of forty-three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

G. T. BEAUREGARD,
Lessee.

(On the margin:) Gottschalk & Magner, notarial office, 158 Common st., New Orleans.
(Across the face:) No. 2. Ne varietur.
Secured by mortgage, duly stamped, $26.
New Orleans, 15th Jan'y, 1867.

S. MAGNER,
Not. Public.

(Across the signature:) Cancelled.

The payment of this note is extended for one year from the 21st day of February, 1867, in conformity with an act executed before me this day, & duly stamped.
New Orleans, Feb'y 19th, 1869.

G. LE GARDEUP,
Not. Public.

(Endorsed:)
362.
(Signed) G. T. BEAUREGARD.
$4,680. Dec. 20.
(Signed) T. P. MAY,
For N. O. & Carrollton R. R. Co.

514 [$2.35 stamp.]
(Signed) G. CURRIE DUNCAN,
Pres't.

(Endorsed also:)

By mutual consent and without reservation, the payment of the within note is extended to the 21st February, 1869, interest thereon having been paid in advance.

New Orleans, Feb. 21, 1868.

(Signed) G. T. BEAUREGARD,
President N. O. & C. R. R. Co.

Note marked K L.

$4,333.33⅓.] NEW ORLEANS, *December 17th*, 1868.

One year after date, I promise to pay to the order of Mr. Thomas P. May, at the Canal Bank, in this city, the sum of forty-three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

(Signed) G. T. BEAUREGARD,
Lessee.

(On the margin:) Gottshalk & Magner, notarial office, No. 158 Common st., New Orleans.

(Across the face:) No. 1. Ne varietur.

Secured by mortgage, duly stamped, $26.

New Orleans, 15th Jan'y, 1867.

S. MAGNER,
Not. Public.

(Across the signature:) Cancelled.

The payment of this note is extended for one year from the 21st day of Febr'y, 1869, in conformity with an act executed before me this day, & duly stamped.

New Orleans, Febr'y 19th, 1869.

G. LE GARDEUR,
Not. Public.

(Endorsed:)

362.

(Signed) G. T. BEAUREGARD.

4,680. Dec. 20.

(Endorsed also:)

515 By mutual consent and without reservation the payment of the within note is extended to the 21 Febr'y, 1869, interest having been paid in advance.

New Orleans, Febr'y 21, 1868.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.

" T. P. MAY,
For N. O. & Carrollton R. R. Co.

" G. CURRIE DUNCAN, *Pres't.*

[$2.15 stamp.]

Check marked L M.

No. 10.] NEW ORLEANS, *April 26th*, 1866.

First National Bank of New Orleans, pay to the order of Widow S. J. Peters six thousand dollars.

$6,000.00.

G. T. BEAUREGARD, *Lessee.*

S. RICH'D PROCTOR.

(Endorsed:) A. E. Peters. E. F. La Villebeuvre.

[2 cents stamp.]

Check marked M N.

No. 14.] NEW ORLEANS, *April 30th*, 1866.

First National Bank of New Orleans, pay to the order of S. A. Kohn, twenty-six hundred & sixty-six $\frac{65}{100}$ dollars.

$2,666.65.

G. T. BEAUREGARD, *Lessee.*

S. RICH'D PROCTOR.

516 (Endorsed:) Arthur Kohn. J. Kohn.

[2 cents stamp.]

Check marked N O.

No. 36.] NEW ORLEANS, *May 5*, 1866.

First National Bank of New Orleans, pay to the order of W. C. Raymond forty-one hundred and sixty-six $\frac{65}{100}$ dollars.

$4,166.65.

G. T. BEAUREGARD, *Lessee.*

S. RICH'D PROCTOR.

(Endorsed:) W. C. Raymond.

[2 cents stamp.]

Check marked O P.

No. 136.] NEW ORLEANS, *June 30*, 1866.

First National Bank of New Orleans, pay to the order of G. C. Duncan, or bearer, eight thousand six hundred & sixty-six $\frac{66}{100}$ dollars.

$8,666.66.

G. T. BEAUREGARD,
Per pro T. P. MAY.

S. RICH'D PROCTOR.

(Endorsed:) Gottschalk & Magner.

[2 cents stamp.]

Check marked P Q.

No. 402.] NEW ORLEANS, *May 3*, 1867.

First National Bank of New Orleans, pay to the order of bearer twenty eight hundred & eighty dollars.

517 $2,880.00.

G. T. BEAUREGARD,
Lessee.

S. RICH'D PROCTOR.

[2 cents stamp.]

Note marked Q R.

$4,166.66$\frac{2}{3}$.] NEW ORLEANS, *5th May*, 1866.

One year after date we promise to pay to the order of ourselves the sum of four thousand one hundred and sixty-six $\frac{66\frac{2}{3}}{100}$ dollars for value

received, with interest at the rate of eight per centum per annum from date until paid.

(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.

(On the margin:) Amedee Ducatel, notary public.
(Across the face:)
Ne varietur.
In conformity with an act before me, dated this day, duly stamped.
N. O., 5th May, 1866.

AMEDEE DUCATEL.

(Across the signatures:) Cancelled.

(Endorsed:
(Signed) G. T. BEAUREGARD.
" T. P. MAY.
" A. C. GRAHAM.

(Endorsed also:) May 8th, 1867. No. 6. Note, including interest, $4,500.00.

Check marked R S.

No. 286.] NEW ORLEANS, *Jan'y* 15, 1867.

First National Bank of New Orleans pay to the order of Gottschalk & Magner eighty-six hundred and sixty-six $\frac{66}{100}$ dollars.
$8,666.66.

G. T. BEAUREGARD.

S. RICH'D PROCTOR.

(Endorsed:) Gottschalk & Magner.

518 Note marked S T.

$90.30 + 3,010.00 = 3,100.30.

NEW ORLEANS, *March 28th*, 1867.

Six months after date the New Orleans & Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of Dr. Joseph Elliott three thousand and ten dollars for value received, with interest at 6 per cent. per annum till maturity.
Due Oct. 1, '67.

G. T. BEAUREGARD,
Lessee.

(Across the signature:) Cancelled.

[$1.15 stamp.]

(E rsed:)
Oct' 1st, 1867. B. P. $3,010 + 90.30 = $3,100.30.

(Endorsed also:) Pay Bank of America.

Note marked T. W.

[New Orleans & Carrollton Railroad, G. T. Beauregard, lessee.]

$3,010+135.45=3,145.45.

NEW ORLEANS, *March 28th*, 1867.

Nine months after date the New Orleans and Carrollton Railroad, by G. T. Beauregard, lessee, promises to pay to the order of Dr. Joseph Elliott three thousand and ten dollars for value received, with interest at 6 per cent. per annum till maturity.

Due December 31, '67.

G. T. BEAUREGARD,
Lessee.

[$1.15 stamp.]

519 (Endorsed:) Dec. 31st, '67. Bill payable, $3,145.45.

(Endorsed also:) Pay Bank of America.

Note marked U V.

[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

$4,500 + 270 = $4,770.

NEW ORLEANS, LA., *April 24th*, 1867.

Nine months after date, the New Orleans and Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of Dr. Joseph Elliott four thousand five hundred dollars for value received in mules, with interest at eight per cent. per annum till maturity.

G. T. BEAUREGARD,
Lessee.

[$2.00 stamp.]

(Endorsed:) N. O. Carrollton R. R. 4,770. 27 Jan'y, '68.

(Endorsed also:) N. O. Carrollton R. R. G. T. Beauregard. 4,500 + 278 = 4,778. Jan'y 27, '68.

Note marked V W.

[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

$4,500.] NEW ORLEANS, LA., *April 24th*, 1867.

520 Six months after date, the New Orleans and Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of Dr. Jos. Elliott four thousand five hundred dollars, for value received in mules, with interest at eight per cent. per annum until maturity.

[SEAL CITIZENS' BANK OF LA.] G. T. BEAUREGARD,
Lessee.

[$4.50 stamp.]

(Across the signature:) Cancelled.

(Endorsed:)

By consent, the payment of this note is extended to the twenty-sixth

of November, 1867; interest paid to that date. New Orleans, Oct. 26, '67.

(Signed) B. L. MILLAUDON,
President N. O. & C. R. R. Co.

(Endorsed also:)

Received in account of the within note one hundred eighty-six dollars.
New Orleans, Oct. 26th, 1867.
(Signed) PAUL DELERY,
Note Clerk.

Note marked W X.

[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

$4,500.] NEW ORLEANS, LA., *April 24th*, '67.

Ninety days after date the New Orleans and Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of Dr. Joseph
521 Elliott four thousand five hundred dollars for value received in mules, with interest at eight per cent. per annum until maturity.

G. T. BEAUREGARD,
Lessee.

(Across the signature:) Cancelled.

[$2.25 stamp.]

(Endorsed:)

N. O. Carrollton R. R. 4,500 + 93 = 4,593.
July 26, '67.

(Endorsed also.)

NEW ORLEANS, *Aug. 31st*, 1867.

Rec'd payment from Messrs. A. Bonneval, Jos. Hernandez & Geo. Binder, with interest & protest fees.

PAUL DELERY,
Note Clerk Citizens' Bank.

Document marked Y Z.

[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

T. P. MAY, Esq.:

DEAR SIR: Including pay rolls for last month we have now about thirty thousand dollars due. The balance in bank is three hundred and

ninety-five dollars and twelve cents. Will you be good enough to let me know what I am to do in the premises.

Very respectfully, y'r ob't sv't,
(Signed) S. RICH'D PROCTOR,
Cashier.

522 *Testimony on behalf of complainant.—Filed May 2d*, 1871.

United States circuit court fifth judicial circuit, and district of Louisiana. In chancery.

CHARLES CASE, RECEIVER OF THE 1ST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Testimony of Louis Meig, taken March 4th, 1871, pursuant to notice, before Hon. J. B. Weller, master in chancery for said court, examiner.

Present, J. D. Rouse, esq., solicitor for complainant; L. E. Simonds, esq., Messrs. Lea, Finney, and Miller, solicitors for Hernandez, Binder, Bonneval, Beauregard, and the N. O. & C. R. R. Co., defendants; W. W. King, esqr., solicitor for the 4th Nat'l Bank of New York; J. W. Gurley, esqr., ass't. U. S. att'y, for U. S.

523 LOUIS MEIG, sworn and examined (on behalf of the complainant).

By Mr. ROUSE:

Q. Do you reside in New Orleans?

A. Yes, sir.

Q. Are you of lawful age?

A. Yes, sir?

Q. Were you in any way connected with the First National Bank of New Orleans?

A. Yes, sir?

Q. State what your office was in that bank in 1866 and 1867?

A. In 1866 I was discount and exchange clerk up to the middle of January, 1867, and then I was acting cashier as well as occupying the same position I have already mentioned.

Q. Please examine the account of G. T. Beauregard, lessee, in the books of the First National Bank of New Orleans, at the entry of the 15th September, 1866. (Shown said books.)

A. The account of G. T. Beauregard, lessee, on these books now examined by me shows that on the 15th day of September, 1866, an
524 entry was made to the credit of said Beauregard, lessee, of forty thousand two hundred and sixty-three dollars and seventy cents ($40.263.70).

Q. Do you know what that credit consisted of?

A. It consisted of cash; it is cash entered here.

Q. Do you know the particulars of that credit, or how it came to be entered?

A. It must have been a note for forty thousand dollars and the balance in cash.

Q. On that day, previous to the entry of that credit, how did that account stand?

A. There is a credit of seven thousand six hundred and fifty-four dollars and eighty-one cents ($7,654.81) at the end of the fifteenth.

Q. If that credit had not been entered, how would the account have stood at the close of that day?

A. It would have been overdrawn by about thirty-two thousand and some odd dollars.

Q. Have you ever seen that paper before? (Shown note an-
525 nexed to complainant's bill.)

A. Yes, sir.

Q. How did that note come into the possession of the bank?

A. It was given by Mr. Beauregard to Mr. May.

Q. What was done with that note?

A. It was handed to the receiving teller as cash money, and the account of Beauregard was credited with the amount of it.

Q. That amount being how much?

A. Forty thousand dollars.

Q. When was that amount credited on the account of Beauregard, lessee?

A. On the fifteenth of September.

Q. How was the note counted in the bank after it was credited?

A. It was placed in the paying teller's hands as cash money.

Q. And counted as cash?

A. Yes, sir; payable at any call.

Q. Examine again that account of Beauregard, lessee. on the books of the First National Bank, on the 19th March, 1867, and state
526 what entry you find on that account of that date.

A. There is an entry on the account of Beauregard, lessee, to his credit on that date of one hundred and forty-two dollars ($142.00), and one hundred and twenty-five thousand dollars ($125,000.00).

Q. On that day, previous to the entry of the credit of one hundred and twenty-five thousand dollars, how did that account stand?

A. There was an overdraft on the evening of the 18th of one hundred and twenty-one thousand one hundred and nine dollars and thirty cents ($121,109.30).

Q. How much was it on the evening of the 19th, or how would it have been if that credit had not been entered? It was the same on the morning of the 19th, was it not?

A. Yes, sir; it was the same in the morning before the bank opened.

Q. What was that credit for? What was it based upon?

A. On exchange; based on nothing at all. It was to deface the
527 overdraft, on account of the examiner being at the bank.

Q. Look at this paper and state what it is. (Shown bill of exchange for one hundred and twenty-five thousand dollars, annexed to complainant's bill.)

A. This is the exchange which was credit' on the account of Beauregard, lessee, on the books of the bank on the morning of the 19th March, 1867.

Q. Who directed that to be credited?

A. The president.

Q. Who was he?

A. Mr. Forbes.

Q. Why was it ordered to be credited?

A. Because the account of Beauregard, lessee, was largely overdrawn, and it was against the national-bank law to allow a larger overdraft than fifty thousand dollars.

Q. They were expecting the examiner, were the not?

A. He was there already.

Q. Examining the bank?

A. Examining the bank; but before he made the examination
528 this matter was arranged.

Q. It was done for the purpose of concealing the overdraft?

A. Yes, sir.

(Objected to by Mr. Miller on the ground that it was merely an expression of opinion on the part of the witness.)

Q. How do you know that fact?

A. Because Mr. Forbes told me afterwards that this should be changed again when we had time to make another entry in the books to make it appear in the way it was before.

Q. How was that draft for one hundred and twenty-five thousand dollars counted in the bank?

A. It was passed to the exchange book and charged in the general ledger in the account of exchange on New York. In this account the time-paper matured was placed.

Q. Was Mr. May present on the nineteenth of March, 1867?

A. Yes, sir; he was in the office with Mr. Forbes.

Q. Was he present at the time this direction was given to you
529 to make this entry?

A. It was Mr. Forbes that came out to me and told me to make this entry. Mr. Beauregard was also sent for at the same time and notified that this was the case.

Q. Were you present when he was notified?

A. I saw him coming out with Mr. Forbes and Mr. May at the time.

Q. Did you hear him say anything about it?

A. No, sir; I did not hear anything. All this took place immediately after the conversation that we had.

Q. Did you have any further directions about this draft after this date?

A. I asked Mr. Forbes several times if I should not make the counter entry of these one hundred and twenty-five thousand dollars.

(Counsel for defendants here objected to all statements of Mr. Forbes and all other parties to the witness as heresay evidence.)

530 WITNESS. He told me that as soon as we had better times he would make the change again.

Q. Please examine that account of Beauregard, lessee, at the entry of May 4th, 1866 and state what credit you find entered on that date?

A. I find a credit of twenty thousand dollars.

Q. Examine the account again at the entry of the 9th June.

A. I find a credit on that date of twenty thousand three hundred and eighty-three dollars and sixty-five cents ($20,383.65).

Q. What credits do you find on that account on the 10th July?

A. Twenty thousand four hundred and forty-three dollars and eighty cents ($20,443.80).

Q. Please examine the account of A. C. Graham on those same books of the First National Bank and state what entry you find on the debit of that account under date of May 4th, 1866?

A. Twenty thousand dollars.

Q. Do you know what that was for?

531 A. It is so long ago that I cannot recollect that.

Q. What debit do you find to that account on the 9th June?

A. The same amounts, twenty thousand dollars.

Q. And on the 10th July what debit do you find?

A. Twenty thousand dollars.

Q. And on the 8th May, 1866, what debit do you find?

A. Thirty thousand dollars.

Q. How did the account of Graham stand on the 4th May, 1866? State whether there was a balance to his credit or debit, and how much it was.

A. He had a credit on that date of forty-nine thousand two hundred and fifty dollars and eight cents ($49,250 $\frac{08}{100}$).

Q. That was after the twenty thousand dollars was entered?

A. That was after the twenty thousand dollars was debited.

Q. At the close of May 8th, what was the balance to his credit after he was charged with the thirty thousand dollars?

A. Thirty-one thousand nine hundred and fifty-nine and fifty-three cents ($31,959 $\frac{53}{100}$).

532 Q. On the 9th June, after having been charged with the twenty thousand dollars you have mentioned, how did his account stand?

A. There were three hundred and nine dollars and fifty-four cents debit.

Q. And on the 10th July, after having been charged with twenty thousand dollars, how did his account stand?

A. Fourteen thousand two hundred and twenty-nine dollars and twenty-nine cents ($14,229 $\frac{29}{100}$) to his credit.

Q. What was the state of the account of A. C. Graham in the First National Bank at its close on the 13th May, 1867?

A. It was overdrawn seven thousand two hundred and fourteen dollars and seventy-nine cents ($7,214 $\frac{79}{100}$.)

Q. What connection had A. C. Graham with that bank from October, 1866, until its close in May, 1867?

A. He acted as agent in New York for the First National Bank.

Q. Is there an account with him as agent on the books of said
533 bank?

A. Yes, sir; in the general ledger.

Q. What was the condition of his account as agent at the close of the bank?

A. He was owing a hundred and one thousand two hundred and ninety-one dollars and seventy-nine cents ($101,291 $\frac{79}{100}$) as agent for the bank, as shown by the account.

Q. Do you know that he actually owed that amount?

A. Yes, sir: I do know it.

Q. How did the indebtedness occur?

A. The bank sent him papers to sell in New York, and for two months before the bank closed he did not come up promptly any more and did not deposit the money at the Fourth National Bank, which was the bank that we were drawing on. We stopped sending him any more exchange to sell as he could not come up in payment.

Mr. Rouse here offered in evidence the account in the books of the First National Bank with A. C. Graham individually, and also
534 the account with A. C. Graham, as financial agent for the First National Bank in the city of New York. It was then agreed to by all parties concerned that the annexed documents marked "A B" and "B A," verified by the witness, are correct transcript of the said accounts from the books of the First National Bank.

Examination resumed by Mr. ROUSE:

Q. Did A. C. Graham make any offer to settle this balance against him as agent of the First National Bank at New York?

A. He made his promises, but he did not come up to them. Up to the time that the bank stopped he made offers to do so.

Q. Did he draw upon any body for any amount?

A. He drew on T. P. May.

Q. For how much; for the amount of the balance?

A. For one hundred thousand dollars; it was in my hands for collection.

Q. Was that draft accepted by May?

A. Yes, sir.

Q. Was it paid?

535 A. Not as long as I was in the bank it was not paid. It was not due at the time, the bank closed, and so it was not paid then.

Q. Do you know anything about the manner in which Beauregard, lessee, drew the money from the bank that is charged against him in his account?

A. Yes, sir; he drew it out by small amounts—sometimes a thousand dollars—every day, something.

Q. What instructions were given to you or to the other officers of the bank by any one in regard to acccepting his checks, and by whom were those instructions given?

A. The paying teller received orders to pay them just as other checks.

Q. Without regard to the state of the account?

A. Without regarding the account.

Q. Who gave those orders?

A. The orders were given at the time of the opening the account with the railroad?

Q. Who gave those orders?

536 A. They were probably given by Mr. Forbes to the paying teller. The paying teller paid his checks just as any other checks, without regard to the state of the account.

Q. Do you know what A. C. Graham's financial condition was on the 13th of May, 1867?

A. The officers of the bank considered his state of affairs financially very poor.

(Mr. Miller objected on the ground that it was merely an expression of the opinion of the witness.)

Q. What was his general reputation among the officers of the bank, as to his solvency or insolvency?

(Mr. Miller objected.)

A. Our opinion was that he was nearly broke. That was our opinion at the latter part of the existence of the bank.

(Mr. Miller objected to the answer as an expression of the opinion of the witness.)

Q. Was the settlement of his balance regarded as doubtful or otherwise?

A. It was considered doubtful.

(Mr. Miller, objected on the same ground.)

Q. Was he a stockholder in the bank?

A. He was.

537 Q. Do you know how many shares of stock he had?

A. I could not state without referring to the stock ledger.

Q. Examine the stock ledger of the First National Bank, and state

what amount of stock Mr. A. C. Graham held at the time of the failure of the bank on the 13th May, 1867? (Shown said book.)

A. He had nine hundred shares.

By Mr. MILLER:

Q. How much were the shares?

A. One hundred dollars each.

By Mr. ROUSE:

Q. Examine this book and state whether it is the transfer book of the First National Bank? (Shown book.)

A. Yes, sir, this is the stock transfer book of the bank.

Q. State whether or not there is a transfer there to A. C. Graham?

A. Yes, sir.

Q. Of what date?

A. On the seventh day of May, 1867.

Q. By whom?

A. By D. B. Forbes, trustee.

Q. How many shares?

A. Eight hundred and ninety shares.

538 Q. Do you know the signature of D. B. Forbes, trustee?

A. Yes, sir.

Q. Have you seen him write frequently?

A. Yes, sir.

Q. Is that his genuine signature to that transfer?

A. Yes, sir.

(Mr. Rouse here offered in evidence the transfer referred to, a copy of which is annexed to the deposition of this witness marked B C.)

Q. State whether there was any transfer of that stock by A. C. Graham in said transfer book to any one?

A. (After examining tranfer book.) The stock was never tranferred; there is no transfer shown by this book.

Q. Was that the only transfer book kept by the bank?

A. Yes, sir.

Q. Please examine the account now handed to you and state what it is? (Shown document.)

A. It is a statement of exchange sold between A. C. Graham as agent of the First National Bank and the First National Bank.

539 Q. By whom was it rendered?

A. By Mr. A. C. Graham—by his clerk, Mr. Latham.

Q. How much does it show?

A. Two hundred and fourteen thousand two hundred and sixty-three dollars and fifty-three cents, ($214,263\frac{53}{100}$.)

(Mr. Rouse offered in evidence said account, which is annexed and marked C D.)

Q. Do you know of any property that Mr. A. C. Graham has that might be subject to a judgment for his debts in this city or elsewhere?

A. No, sir, he has no property here so far as I know. He has no property here to my knowledge.

By Mr. KING:

Q. You are well acquainted with Mr. Graham, are you not?

A. Yes, sir.

Cross-examined by Mr. MILLER:

Q. Who entered the credit of forty thousand dollars?

A. The book-keeper.

Q. Who did the bank receive that note from?

A. We received it from Mr. Thos. P. May.

540 Q. Were you present when Mr. Heron endorsed it?

A. No, sir.

Q. Was Mr. Beauregard at the bank at the time it was drawn or endorsed?

A. I cannot recollect.

Q. These checks of Beauregard which were paid in excess of the account were paid under instructions from whom?

A. Under instructions from the president.

Q. Were those instructions special?

A. They were told to the paying teller.

Q. Were they general instructions or were they given at each time that a check was presented?

A. They were given at the time the account was opened; as soon as the account was opened, there were no other instructions necessary. I think they were given at the time the accounts were opened. The instructions were to pay the checks that he presented without reference to deposits.

Q. Look at the account of Beauregard, lessee, in the book of the First National Bank, and state whether that account was over-

541 drawn at the close of September 5th.

A. Yes, sir.

Q. How was it at the close of September 6th.

A. It was still overdrawn.

Q. How did it stand on September 6th?

A. He had overdrawn on that date seven thousand three hundred and twenty-five dollars ($7,325).

Q. Now, then, on September 5th, how did it stand?

A. There was a credit of one thousand two hundred and thirteen dollars and seventy-four cents ($1,213$\frac{74}{100}$).

Q. Who handed the draft for one hundred and twenty-five thousand dollars to the bookkeeper?

A. It was handed to me only.

Q. By D. B. Forbes?

A. Yes, sir.

Q. Did any one else speak to you about it at the time?

A. No, sir; it was made out by Mr. Thomas P. May, and handed to me by Mr. D. B. Forbes.

Q. You do not know what passed between Thomas P. May and D. B. Forbes on the subject?

542 A. My knowledge is that the account was largely overdrawn.

Q. You do not know what passed between them that morning?

A. I could not say what the conversation was between them.

Q. You have alluded to four credits in the account of A. C. Graham. Did A. C. Graham ever deposit any money in your bank?

A. He made deposits in the bank.

Q. To your personal knowledge?

A. To my personal knowledge.

Q. Were those credits entered up there under the direction of anybody?

A. They were entered up just as the credits of any one else.

Q. Were they entered up in accordance with any special directions of anybody in the bank?

A. Not to my knowledge.

Q. What was A. C. Graham's business there at that time?

A. He was cashier in the beginning, and afterwards president.
Q. Had he any other business?
A. He was first bookkeeper in some insurance company, and some other stock companies.
Q. The relations between A. C. Graham and Thomas P. May were very intimate, were they not?
542 A. Yes, sir.
Q. Did A. C. Graham make those deposits personally, or did any one else make them for him?
A. He made them personally through his clerk.
Q. He had a clerk there then?
A. Yes, sir.
Q. How much money, to your knowledge, did he deposit in that bank?
A. Well, I could not tell you that exactly; the account shows it.
Q. You have no personal knowledge of the fact, have you?
A. The only personal knowledge I have is that he made deposits.
Q. To what extent does your personal knowledge extend?
A. He made some very heavy deposits and some smaller deposits.
Q. Did he keep a bank book?
A. Yes, sir.
(The witness here desired to correct his testimony in so far that he had stated that Mr. D. B. Forbes was president of the First National Bank on the nineteenth of March, 1867. He desired to state that Mr. Forbes was vice-president of the bank at that time, and that
544 Mr. Thomas P. May was president at that time.)
(Signed) LOUIS MEIG.

Sworn to before me this 4th March, 1871.
[SEAL.] WM. B. WELLER,
U. S. Com. and Master in Chancery.

The taking of the testimony in this case was then continued until Tuesday, the seventh day of March, 1871.

UNITED STATES OF AMERICA,
District of Louisiana:

I do hereby certify that the forgoing witness, Louis Meig, was sworn by me and his testimony was taken in phonographic character by C. W. Colton, and subsequently translated by him. I do also certify that on this day the said Colton appeared before me and on oath declared that the foregoing translation is in all respects correct.
Given under my hand and seal at New Orleans, in the district aforesaid, this 1st of May, 1871.
[SEAL.] (Signed) WM. B. WELLER.
U. S. Com. and Master in Chancery.

545 *Testimony for Complainant.—Filed May 2d*, 1871.

U. S. circuit court, fifth circuit & district of Louisiana.

CHAS. CASE, RECEIVER OF THE 1ST NAT'L Bank of N. O., *vs.* G. T. BEAUREGARD & ALS. } No. 5931.

Testimony taken before Hon. J. B. Weller, U. S. Commissioner, Tuesday, March 7th, 1871.

Present, J. D. Rouse, esq., for complainant.

WM. M. PERKINS sworn and examined (on behalf of the complainant)

By Mr. ROUSE:

Q. You were a director in the First National Bank, I believe.

A. I was.

Q. Were you a director in that bank at the time of its failure on the 13th day of May, 1867?

A. I was.

Q. How long before that had you been a director?

A. Since about January of the preceding year. I think it was for a year and three or four months that I was in there before the failure.

Q. State, if you please, how often the directors of the bank had meetings for the transaction of business.

546 A. Really I am not able to say how often.

Q. Did they meet regularly?

A. They did not.

Q. State how many meetings of the board of directors took place within nine months of the time of the failure of the bank.

A. It is impossible for me to answer that question. I have nothing to guide me and my memory does not serve me. I was absent in New York during a portion of the year.

Q. What portion of the year were you absent?

A. July, August, and September, I think. I was usually absent during those months.

Q. Did the board of directors often have a quorum at their meetings?

A. They did not; they seldom had one.

Q. Was paper laid before them for their approval for discount?

A. Not to my recollection; indeed I am quite sure that I never saw any.

Q. Who was the principal manager of the bank during the time you were director?

A. Mr. A. C. Graham at first for several months, and then Mr. Thomas P. May.

Q. Did they consult the board of directors as to the disposition of the funds of the bank or the management of them?

A. They did in some respects—once in reference to purchas-

547 ing a banking house, I recollect.

Q. As a general thing, did they consult the board of directors?

A. No, sir; with regard to the disposition of the funds *the funds* they did not, so far as I know.

Q. What knowledge had you as a director of that bank or otherwise of the account of G. T. Beauregard, lessee?

A. I had no knowledge of it whatever; I knew nothing of it until I was spoken to by Mr. Knox, the agent of the government, who came here at the time of the failure of the bank.

Q. What knowledge had you of a credit of forty thousand dollars in that account in September, 1866?

A. I do not know anything about it; I never heard of it before. I do not think I was present in New Orleans in September, 1866.

Q. Did you have any knowledge of that credit after you returned?

A. No, sir; I never heard of it until now that I know of. This question of yours is the first intimation I ever had of it.

Q. What knowledge had you of a credit of one hundred and twenty-five thousand dollars in the account of Beauregard, lessee, in March, 1867?

A. I had no knowledge of it all.

548 Q. Was there a bill of exchange for one hundred and twenty-five thousand dollars drawn by T. P. May upon A. C. Graham in March 1867, submitted to the board of directors?

A. Not to my knowledge.

Q. As a director and stockholder in said bank did you have any knowledge of a note drawn by G. T. Beauregard, lessee, per pro T. P. May, for forty thousand dollars upon demand?

A. I did not.

Q. What knowledge had you, if any, of the discount by said bank of notes drawn by H. T. Hays, Walton & Deslonde, J. B. Walton, J. O. Nixon, F. J. Herron, or Richard Taylor, or any one of them?

A. I do not recollect to have heard anything of any of those notes until after the failure of the bank.

Q. They were never submitted to the action of the board when you were present?

A. Not in my presence, nor to my knowledge.

Q. Was the matter of the account of Beauregard, lessee, ever brought to the attention of the board of directors?

A. Never, that I recollect.

Q. Were you in the habit of attending the regular meetings of the board?

A. I attended to the meetings to which I was speci'lly called.

549 The regular meetings or the meetings fixed by the by-laws were not regularly attended. I went several times when I first became a director, and I found there was no quorum present, and no regular session, and afterwards I went only when I was sent for and specially invited.

Q. Is it to your knowledge that regular meetings of the board were not held, or that it was understood that the members would be invited to attend when meetings were held?

A. I do not know that there was any specified understanding on that subject. I know there were repeated failures to get a quorum at regular meetings. I do not wish to be understood as saying that I did not attend any regular meetings.

(Signed) W. M. PERKINS.

Cross-examination reserved.

Sworn to before me this 7th day March, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. Com.

D. B. FORBES sworn and examined (on behalf of the comp'ainant).

By Mr. ROUSE:

Q. What connection had you with the First National Bank of New Orleans?

A. I commenced as a clerk, was then cashier, was vice-president afterwards, and then president.

550 Q. How long were you a director of that bank?

A. Only a few months, from January up to the time of the annual election; from January, 1867, up to the 13th of May.

Q. When were you elected president?

A. Well, it was about three or four weeks, I think, before the suspension, some time in the latter part of April, I believe.

Q. How long before that had you been vice-president?

A. From January up to that time. I became a stockholder for the purpose of qualifying as vice president. I could not become a member of the board without being a stockholder.

Q. How long altogether were you connected with the bank?

A. From the day it commenced (the 18th day of January, 1864), until the 13th day of May, 1867.

Q. Who was president of the bank in the spring of 1866?

A. T. P. May was elected on the 6th day of October, so A. C. Graham was president of the bank at that time.

Q. Had you any knowledge of the account of Beauregard, lessee, kept in that bank?

A. Yes, sir, I knew that it was overdrawn. I do not know the
551 precise amount. I did not keep the run of it in the ledger. I know that it was always overdrawn or pretty nearly always.

Q. What instructions were given to the paying teller about paying the checks of Beauregard, lessee?

A. To pay them. I frequently spoke to them (Graham and May), but they said it would be all right.

Q. Who said that it would be all right?

A. Mr. Graham, when he was there, and Mr. May afterwards, because they said they were all interested in it together, Mr. May, Mr. Beauregard, and Mr. Graham.

Q. Who said this?

A. Well, Mr. Graham told me at first and Mr. May afterwards. They expected to make a large profit out of the transaction.

Q. Did Mr. May, when he was president of the bank, know of these overdrafts in the account of Beauregard, lessee?

A. Certainly.

Q. Was it with a knowledge of these overdrafts that he gave instructions that the checks of Beauregard, lessee, should be paid?

A. Yes, sir.

Q. Do you know what the amount of that overdraft was in September, 1866?

A. I could only state by reference to the ledger. I am confident that the ledger was correct, but I did not keep it myself.

552 Q. Do you remember whether there was an overdraft at that time?

A. There was always an overdraft. We had a small memorandum book in which the bookkeeper entered the overdraft, and we worked it out.

Q. Do you know of a note for forty thousand dollars being credited in that account?

A. I could not remember now.

Q. Do you recollect that such a note drawn by Beauregard, lessee, was made part of the assets of the bank?

A. I suppose it was, but I do not recollect these things now?

Q. Look at this note annexed to plaintiff's bill of complaint. (Shown said note.)

A. I remember the note; it is filled up in my handwriting.

Q. Now state what you know about the way in which that became a part of the assets of the bank.

A. It must have been in the cash. It did not go through the dis-

count clerk's ledger. When it was it was put in by the receiving teller as so much cash by Mr. May's direction.

Q. Do you remember what Mr. May said at the time it was signed?

A. I cannot recollect particularly. I suppose he said it was to be put to that account.

Q. State as far as you can what he did say.

553 A. The receiving teller's book shows that it was deposited on that date to the credit of Beauregard, and it was put into the receiving teller's drawer as so much cash to make good the account of Beauregard, lessee, because it did not go through the discount book.

Q. Look at this bill of exchange annexed to plaintiff's bill of complaint and state what recollection you have of it. (Shown said bill of exchange.)

A. I recollect that very well.

Q. State under what circumstances that bill of exchange was drawn and for what purpose?

A. When I spoke to Mr. May about the large overdraft on that account of G. T. Beauregard, lessee, he told me that he would make it all right—that it would be all right, and to draw that bill of exchange on Mr. Graham, and told me to put it to the credit of Beauregard, lessee, but not to send it forward then. They had a private correspondence between themselves. It was placed to the credit of Beauregard, lessee, at par.

Q. Did you cause it to be so credited?

A. Oh, yes, sir; I had it entered *it* on the exchange book and credited to that account. I handed it to the exchange clerk.

Q. Who was the exchange clerk?

A. Louis Meig.

Q. What was the object in making that credit at that particular time?

554 A. It was to make the account appear good.

Q. Appear good to whom?

A. To the United States examiner.

Q. The bank examiner?

A. Yes, sir.

Q. Where was he from?

A. From Washington, sent out by the government. The overdraft was a hundred and twenty-two thousand dollars, and he just drew a bill for one hundred and twenty-five thousand dollars.

Q. How often did the board of directors of the First National Bank during the year prior to the failure of the bank have meetings?

A. Oh, I do not know; I was never present but at one meeting, and that was just after I was elected vice-president. I attended but three meetings of the board after I became a director. I wish to state also that I was cashier for a year before, and I was never once notified to meet the board, although it is usual always for the cashier of the bank to act as secretary of the board, and that was something I did not understand. I could not ask them to notify me.

Q. How many meetings did they have after you became a director prior to the failure?

A. Only these three. I was present. I was right on the spot. The three last meetings of the board I was there.

Q. Who wrote up the minutes of the meetings of the board of directors?

555 A. I did.

Q. Are these now shown to you the minutes which you prepared? (Shown book.)

A. Yes, sir.

(Mr. Rouse, counsel for complainant, here offered in evidence the minutes of the board of directors of the First National Bank of New Orleans from September 8th, 1866, to April 8th, 1867, a copy of which minutes is hereto annexed and marked DE, (pages 585–591 of this transcript.)

Q. Was the portfolio of the bank laid before the directors at their meetings?

A. No, sir; they never asked for it; it was always ready, but they never asked for it.

Q. Did the board ever examine the discount of the bank before discounting it?

A. Not before it was discounted. In the first commencement of the bank they did.

Q. From September, 1866, up to the time of the failure of the bank in 1867, how often was there paper laid before the board of directors for its action before discounting it?

A. Never, that I know of.

Q. Was the attention of the board called to the state of the account of Beauregard, lessee?

A. I cannot answer for the statement to the board until Janu-
556 ary. I was not present until then. I can state from the minutes only. I was not present at the meetings of the board until January, 1867.

Q. Well, after you became a director?

A. No, sir; nothing of the kind was done.

Q. Had the board of directors, as a board, any knowledge of the bill of exchange about which you have testified?

A. I do not know that they had, sir. They used occasionally to look over the books; they had no regular examination for some time.

Q. During the presidency of Thos. P. May in that bank who had the control and management of its assets and of its operations?

A. He had, sir, so far as that is concerned.

Q. With reference to the board of directors or without?

A. He was the board, you may say, for he used to loan money out whenever he saw proper, without any consultation with the board that I know anything about.

Q. Do you know personally whether A. C. Graham kept an account in that bank?

A. Yes, sir.

Q. When he was president of it?

A. Yes, sir.

557 Q. Was that an individual account?

A. Yes, sir; he kept an account even when he was cashier, before he became president.

Q. Do you know of your own knowledge whether he made frequent deposits in that bank?

A. Yes, sir; I believe he did.

Q. Up to large amounts?

A. I believe so. I do not recollect the state of the accounts. I had so many other things to do that I did not keep the run of the individual ledger, but I know that he has an account, because I saw it and saw checks drawn.

Q. What position did A. C. Graham hold with regard to the bank after he ceased to be president of the bank?

A. He was the agent in New York for the bank for the purchase and sale of sterling exchange and other things. He was what was called an agent for the bank.

Q. Did he render accounts current from time to time?

A. Yes, sir; from time to time.

Q. Who used to sign those accounts current?

A. They were sometimes signed by him and sometimes signed for him by his clerk, Mr. Latham.

558 Q. Would you know the signature of Mr. Latham?

A. Yes, sir; I would know it.

Q. Please examine the signature annexed to the account current attached to the deposition of Louis Meig, marked C D, and state whether or not it is the signature of Mr. Latham.

(Shown said account current, page 583 of this transcript.)

A. Yes, sir; that is his signature.

Q. What was A. C. Graham's financial condition at the time the bank failed?

A. I really do not know. He was in New York.

Q. Do you know whether he was indebted to the bank at that time or not?

A. Individually or as agent?

Q. Either way.

A. He had no individual account with the bank, then, only as agent. He may have had a small account individually, because he went away before closing it, and T. P. May held his power of attorney.

Q. Do you remember what the state of his account was as agent for the bank?

A. I cannot recollect without reference to the books.

Q. Do you know whether he was indebted to the bank or not at the time of its failure?

559 A. I do not know.

Q. I want to call your attention to the fact that he gave a draft on May.

A. At the time he rendered the account he was indebted in a balance of one hundred thousand dollars for which he gave a draft on T. P. May, which was accepted by Mr. May but never paid; at least it was never paid at the time the bank suspended, and I do not believe it is paid yet.

Q. Did he settle that balance in any other way besides by that draft?

A. No, sir.

Q. Have you seen him since then?

A. I have.

Q. Where?

A. In New York.

Q. What did he say about that draft?

A. He said that if he had drawn it at sight instead of drawing a time-bill it would have been paid out of the money to the credit of Mr. May, but as it was a time-bill and Mr. May had accepted it it did not mature until after the bank suspended and consequently it was not paid and that the government had attached the funds of Mr. May.

Q. What did he say about his financial condition?

560 A. He told me that he was very poor and that all the assistance he got was from his wife's friends or father, or some of her relatives.

Q. He claimed to be dependent upon them?

A. Well, in fact he told me that he had nothing of his own and that if it was not for his wife's father being wealthy he did not know what he would do. That was in the summer of 1868.

Q. What reason did he give for being in the financial condition that he claimed to be in?

A. I do not recollect about that; he said that May had transferred property of his (Graham's) to secure May's indebtedness to the government.

Q. Did he say what that property was?

A. I cannot remember. I think he mentioned this railroad business, and then I think he said something about a planting interest. I am not certain, but I think he said something about a planting interest.

Cross-examination reserved and the evidence of D. B. Forbes was here closed.

(Signed) D. B. FORBES.

Sworn to this 7th March, 1871.

561 [SEAL.] (Signed) JOHN B. WELLER,
U. S. C. and Master in Chancery.

PHILIP HELM sworn and examined (on behalf of the complainant).

By Mr. ROUSE:

Q. What connection had you with the First National Bank of New Orleans?

A. I was individual bookkeeper.

Q. During what time?

A. From 1864; I believe about five or six months after the time that the bank started, until it failed on the 13th of May, 1867.

Q. Did you keep the account of G. T. Beauregard, lessee?

A. Yes, sir.

Q. Examine the entry on the credit side of the account of Beauregard, lessee, on the books of the First National Bank on the 15th of September, and state what it is.

A. The amount is forty thousand two hundred and seventy-three dollar' and seventy cents ($40,273.70).

Q. What does it appear to be?

A. Cash.

Q. What do you know about the facts connected with that credit?

562 A. I took it from the receiving teller's books on his deposit ticket at that time, but what it was composed of I do not know; whether it was money or whether it was a check I do not know.

Q. Examine the account of A. C. Graham individually with said bank from the 16th of April, 1866, to its close, and state whether you kept that account.

A. Yes, sir; I did.

Q. Do you know of your own personal knowledge whether he made deposits in that bank?

A. Yes, sir; he made deposits.

Q. From what did you take the amounts you have charged in that account?

A. Well, checks.

Q. Checks drawn by him?

A. Yes, sir.

Q. Were the entries made directly from the checks themselves?

A. From the checks themselves.

Q. By you?

A. By me.

Q. Examine the entry to the debit of A. C. Graham on the 4th of May, 1866, and state what it is.

A. It is a check.

Q. For how much?

A. Twenty thousand dollars.

563 Q. Examine the entry to his debit on the 9th of June.

A. That is another check for twenty thousand dollars.

Q. Examine the entry to the debit of his account on the 10th of July?

A. That is a check, too, for the same amount, twenty thousand dollars.

Q. Examine the entry to his debit on the 8th of May, 1866, and state what it is?

A. That is a check, too, but I cannot state whether it is one check or several; it might be several checks or several amounts.

Q. How much is the aggregate?

A. Thirty thousand dollars.

Q. On the 4th of May, 1866, prior to the debit of twenty thousand dollars, how much had A. C. Graham to his credit in the bank?

A. Sixty-nine thousand two hundred and fifty dollars and eight cents, ($69,250.08).

Q. On the 9th of June how much had he to his credit prior to the payment of the check for twenty thousand dollars?

A. Nineteen thousand six hundred and ninety dollars and fifty-six cents ($19,690.56).

564 Q. On the 10th of July, prior to the payment of his check for twenty thousand dollars, how much had he to his credit in said bank?

A. Thirty-four thousand two hundred and twenty-nine dollars and twenty-nine cents ($34,229.29).

Q. What credit do you find upon the account of G. T. Beauregard, lessee, on the 4th of May, 1866?

A. Twenty thousand dollars.

Q. Do you know what that was composed of?

A. According to the book it appears to be a check.

Q. On the 9th of June what credit do you find on that account?

A. Twenty thousand three hundred and eighty-three dollars and sixty-five cents ($20,383.65).

Q. Do you know what it was composed of?

A. It appears, as I looked on Sunday at the receiving teller's check-book, that it was a twenty thousand dollar check, and that the three hundred and eighty-three dollars and odd cents were composed of some other cash.

Q. On the 10th of July, 1866, what credit was entered on the account of Beauregard, lessee?

A. Twenty thousand four hundred and forty-three dollars and eighty cents ($20,443.80).

565 Q. What was the credit composed of?

A. A check for twenty thousand dollars; and the four hundred and forty-three dollars and some odd cents were some other cash; I don't know what.

Q. What do you know about the instructions which were given in regard to the account of Beauregard, lessee?

A. When the first overdrafts were made I reported.

Q. To whom?

A. To the president, at that time. I do not know who was president at that time, whether it was Mr. May or Mr. Graham, but they told me it was all right.

Q. Did you report again?

A. I reported several times that the account was overdrawn. I was always answered "That is all right." Then I did not report any more. I put the overdraft in a little book that I had expressly for the purpose of putting overdrafts. In that book I put every morning the accounts that were overdrawn, and the amount of the overdrafts, and the president looked at that book every day. Those he wanted me to notify I notified.

Q. Did he ever ask you to notify Beauregard, lessee?

A. Never.

Q. How long did that continue in that way?

566 A. Well, from the first overdraft until about the end of the bank, when the bank failed.

Q. During the whole of this time who was president of the bank?

A. Mr. May, and afterwards Mr. Forbes.

Q. Did Mr. May examine this book showing the overdrafts that you speak of?

A. Yes, sir; I showed him that book. I had that book on my desk open every day so that they could see it.

Q. Did he ever give any reasons to you or to anyone why the account was allowed to be overdrawn?

A. No, sir; all I knew was that I had to pay his checks.

Q. Were you acquainted with the signatures of Thomas P. May and A. C. Graham?

A. Yes, sir.

Q. And of Beauregard, lessee?

A. Yes, sir.

Q. Did you enter up all the checks drawn by Beauregard, lessee, in that account?

A. Yes, sir.

Q. Turn to the account of Beauregard, lessee, in the books of the First National Bank on the 19th of March, 1867, and state what credit you find in that account under that date. Speak only of the largest credit?

567 A. One hundred and twenty-five thousand dollars.

Q. Do you know what that credit consisted of?

A. By the ticket I could tell exactly. It appears here as cash. If I could see the deposit ticket it would explain whether it was exchange or cash, or whatever it was.

(Signed) PH. HELM.

Cross-examination reserved.

Sworn to this 7th March, 1871.

(Signed) JOHN B. WELLER,
U. S. C. & Master in Chancery.

LOUIS MEIG recalled (on behalf of the complainant).

By Mr. ROUSE:

Q. What directions did you receive from any one at the time the draft for one hundred and twenty-five thousand dollars (about which you have testified) was entered up in the bank in March, 1867, about said draft?

A. I was instructed to pass it to the cashier's account, and the general book-keeper was instructed to pass it to exchange on New York.

Q. Who gave you that instruction?

A. Mr. Forbes.

Q. Why was this done?

568 A. To make the overdraft of G. T. Beauregard, lessee, disappear.

Q. What object had they in that at that particular time?

A. There was an examiner of the bank present, and it was in order not to show him the overdraft in this account, it being against the national banking law to have such a large overdraft.

Q. What was said to you about exhibiting the draft to the examiner?

A. I was told not to show it.

Q. Who told you not to show it?

A. Mr. Forbes.

Q. Did he give any reason?

A. He told me that it was merely a transfer, which would be made contra after the bank examiner was gone again.

Q. Were you present at the time that John J. Knox took possession of the bank on the 13th of May, 1867?

A. Yes, sir.

Q. Who remained in charge of that bank until the receiver was appointed and took charge of its assets? Who had control of it?

A. Mr. Knox and Meline had the control of it. There was no president any more. I remained in the bank.

Q. Did not Mr. Knox control it?

A. He took control on the morning of the day after the failure.

569 Q. How long did he have charge and control of it?

A. He had control of it about two weeks, when Mr. Case took possession of the bank.

Q. Was he much of the time during those two weeks in the bank?

A. Yes, sir; mostly every day.

Q. Was there any business done there as a bank?

A. No, sir.

Q. Did he examine the accounts and assets of the bank?

A. Yes, sir.

Q. Who else was there as an agent of the government?

A. Mr. Meline was there also. He was an agent for the government also.

Q. Did he examine the accounts?

A. He examined the assets and accounts.

Cross-examination reserved.

(Signed) LOUIS MEIG.

Sworn to this 7th March, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. C. & Master in Chancery.

Counsel for the defendants object to all the testimony of the four foregoing witnesses as to any statements made to them by A. C. Graham, T. P. May and others, to which they testify, upon the ground that
570 such testimony is hearsay, and res inter alias as to the defendants.

Counsel for defendants also reserve all other legal objections to the testimony, to be urged upon the trial.

UNITED STATES OF AMERICA,
District of Louisiana:

I do hereby certify that the foregoing witnesses, to wit, Wm. M. Perkins, D. B. Forbes, Philip Helm and Louis Meig, were duly sworn by me, and that the testimony was taken down by C. W. Colton in phonographic characters, and subsequently translated by him. I do also certify, that on this day he appeared before me, and on oath declared that the foregoing translations are correct in all respects.

Given under my hand and seal, at New Orleans, this 1st May, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. Com. & Master in Chancery.

571 Testimony taken before Hon. John B. Weller, U. S. commissioner, April 8th, 1871.

Present:
For complainant, J. D. Rouse, esq.
" G. T. Beauregard, }
" A. Bonneval, }
" G. W. Binder, } Messrs. Lea, Finney and Miller.
" J. Hernandez, }
" N. O. & C. R. R. Co., }
" United States, J. W. Gurley, esq.
" 4th Nat'l B'k of N. Y., W. W. King.

FRANK F. CASE sworn and examined (on behalf of the complainant).

By Mr. ROUSE:

Q. What is your employment with the receiver of the First National Bank?

A. Bookkeeper and cashier.

Q. How long have you been so employed by him?

A. Since the 15th day of December, 1867.

Q. Has your employment been such as to give you a knowledge of the condition of the affairs of that bank, of the value of its assets and of the amount of liabilities existing against it?

A. Yes, sir.

Q. State what deficits in collectable assets there will probably be as compared with the liabilities of the bank?

572 The deficits will probably be between six and seven hundred thousand dollars.

Q. Your knowledge of the assets is such as to enable you to form an opinion of their value?

A. Yes, sir.

Q. And you think that after all that is collectable or been collected there will still be a deficiency of more than six hundred thousand dollars?

A. Yes, sir.

Q. Or that sum less than the liabilities of the bank, exclusive of the liabilities as capital?

A. Yes, sir.

Cross-examined by Mr. MILLER:

Q. Have you any personal knowledge of these liabilities of the bank?

A. Yes, sir; I have examined them and made the statements from the books.

Q. Is your knowledge altogether derived from the books?

A. From the books of the bank and the receiver's books, and the notes and bills on hand.

Q. Do you know the signatures to those notes and bills?

A. No, sir.

Q. Do you know the condition of the parties who signed those notes and bills?

573 A. A great many of them are in bankruptcy that is my knowledge; we have received notices from the bankrupt court to that effect.

Q. You say a great number of them. What knowledge have you of those of whom you have not received notices from the bankrupt court?

A. From general reputation they are not considered worth anything.

Q. Has the government ever made any claim upon the receiver upon this check for $315,779?

A. I would not be certain about that, but I think they have.

Q. Does the government now hold that check?

A. Yes, sir.

Q. In reference to this draft for one hundred thousand dollars, acepted by Thomas P. May, to which some reference was made on Saturday, have you ever seen it?

A. I believe I have; I cannot say for certain.

Q. Where is it now?

A. That I cannot tell.

Q. Who holds that bill now?

A. I think the receiver of the bank holds it.

Redirect by Mr. ROUSE:

574 Q. You know, do you not, the fact that debtors of the bank to a large amount, who are not in bankruptcy, are not worth sufficient property to enable the receiver to realize the amount of their debts?

A. Yes, sir; I know that to be the fact; we have judgments against a great many of them, and we cannot realize on those judgments.

(Mr. Miller objects to any testimony in reference to any judgments on the ground that the judgments themselves and the writs of fieri facias issued thereon, if any, should be produced.)

Q. Do you not that you have made inquiries as to whether judgments could be collected against many parties who were largely owing the bank, and have ascertained that no property of theirs was visible for the purpose of realizing the debts?

A. Yes, sir; I have made some inquiries.

Q. You know the fact that the liabilities against the bank, in a great measure, from having in your capacity as clerk for the receiver

575 received the proof of those liabilities?

A. Yes, sir; I have made up the certificates in nearly all the cases.

(Mr. Miller objected on the ground that the proofs referred to should be produced themselves.)

Q. Have you not made up the certificates in nearly all cases since you have been acting with the receiver which he has given to creditors of the bank?

A. Yes, sir.

(Signed) FRANK F. CASE.

(Mr. Miller objected to any evidence concerning the certificates referred to on the ground that the certificates themselves are the best evidence.)

Sworn to before me this 8th April, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. C. & Master in Chancery.

UNITED STATES OF AMERICA,
District of Louisiana:

I do hereby certify that the foregoing witness, Frank F. Case, was sworn before me, and that his testimony was taken in phonographic characters by C. W. Colton, and subsequently translated by him. I do also certify that on this day the said Colton appeared before me
576 and declared on oath that the foregoing translation is in all respects correct.

Given under my hand and seal at New Orleans, in the district aforesaid, this 1st of May, 1871.

[SEAL.] (Signed) JOHN B. WELLER,
U. S. Com. & Master in Chancery.

Exhibit A B.—Filed with testimony May 2d, 1871.

Copy of account of A. C. Graham with First National Bank of New Orleans from Ledger 2, beginning with the year 1866.

DR. *A. C. Graham in ⅌ with First National Bank N. O.* CR.

1866.				1866.			
Jan.	3.	To check	300 00	Jan.	1.	By bal. from Ledg. 1	11,594 40
	9.	"	384 71	"	12.	" cash	1,000
	11.	"	115	"	"	" "	500
	15.	"	87 90	"	18.	" ex	11,540 49
	17.	"	30,189 30	Feb'y	2.	"	1,000
	18.	"	10,000		7.	"	29,900
	19.	"	240		8.	"	64 04
	24.	"	400 40		28.	" Graham, H. G., & Co	10,000
	25.	"	4,807 95	M'ch	3.	"	5,000
	"	"	235		10.	"	125
	26.	"	100		26.	" the folio 542	19 35
	"	"	29 85	Apr.	23.	"	2,000
	27.	"	100		27.	"	92,347 13
	29.	"	100		30.	"	4,590

577

Jan.	30.	To check	2,800
"	"	"	6,017
Feb.	1.	"	21
	2.	"	300
	3.	"	582
	6.	"	5,000
	10.	"	67
	12.	"	850
	13.	"	163 70
	14.	"	19,447 6
	"	"	150
	15.	"	18 0
	16.	"	50
	17.	"	44 31
	20.	"	271 30
	24.	"	50
Mch.	3.	"	319
"	"	"	40 70
	5.	"	760 40
	9.	"	5,000
	12.	"	255 57
	21.	"	19 35
	23.	"	2,000
	24.	"	200
	26.	"	300
	27.	"	873 04
	28.	"	120 96
	29.	"	130 2
	31.	"	504 50
Apl.	5.	"	82 30
	6.	"	120 50

578

Apr.	9.	To check	460 3
	10.	"	313 90

Exhibit A B.—Continued.

DR. *A. C. Graham in a/c with First National Bank N. O.* CR.

	12.	.....	52 85					
	19.	.....	2,000					
	24.	.....	528					
	30.	.....	2,494 98					
		Balance.....	70,092 93					
			169,590 41					169,590 41
May	2.	.....	300	May	1.	By balance	70,092 93	
"		.....	542 85		5.	" check	12,700	
	4.	.....	20,000			To balance	872 44	
	7.	.....	862 99					
	8.	.....	30,000					
	11.	.....	106 65					
	16.	.....	100					
	18.	.....	545 65					
	25.	.....	10,000					
	29.	.....	644 23					
June	9.	.....	20,000					
	16.	.....	563					
			83,665 37					83,665 37
June	16.	To balance	872 44	June	30.	By cash	3,061	
	27.	" check	533 25	"	"	" ex.	200,000	
	30.	"	744 95	July	2.	" cash	11,466 67	
July	2.	"	200		7.	" "	28,340 11	
	3.	"	4,395 31		12.	"	2,613 27	
"		"	200	Sep.	5.	" Chas. Claiborne.....	100	
	5.	"	889 87		6.	" gold ex	11,000	
"		"	80 50		8.	" do. cash	14,000	
	6.	"	24 65					
	7.	"	200,697 52					
579								
July	10.	To check	20,000					
	12.	"	280					
"		"	10,025					
	13.	"	200					
	14.	"	768 65					
"		"	750					
	24.	"	175 50					
	26.	"	308					
Aug.	7.	"	3 30					
	30.	"	1,492 44					
Sept.	3.	"	300					
"		"	674 13					
	10.	" gold.....	25,000					
"		"	806 31					
"		" balance	1,159 53					
			270,581 05					270,581 05
Sept.	26.	To check.....	17 50	Sep.	10.	By balance	1,159 53	
	27.	"	3 83		17.	" B. F. Flanders.....	50	
Oct.	3.	"	300					
	4.	"	137 25					
	6.	"	65 95					
	8.	"	366 26					
	10.	" gold.....	50,000					
	13.	"	414 56					
Nov.	26.	"	342 70					
Dec.	3.	"	300	Oct.	11.	" to general b. k.....	50,000	
	15.	"	3,970	Dec.	3.	" cash	438 54	
	19.	"	1,093 54			" balance toLedg. 3 ..	5,363 54	
			57,011 61					57,011 61
1867.				1867.				
Jan'y	1.	To balance from Ledg. 2	5,363 54	Jan.	21.	By cash.....	4,911 25	
580								
Jan.	4.	To check	300					
	1.	" "	4,911 25					
Feb.	20.	" 2	1,100					
M'ch	1.	"	76 25					
	7.	"	375					

Account verified by me.
(Signed) LOUIS MEIG.

581 *Exhibit B A.—Filed with testimony May 2nd, 1871.*

Copy of account of A. C. Graham, agent, New York, with First National Bank of New Orleans, from the general ledger, commencing October, 1866.

1866.				
Oct.	19.	To Com. Ex. B'k	200,000	
"	"	" " " "	200,000	
"	"	" Jay Cook & Co	238,643	29
"	"	" 1st Nat'l Wash'n	350,000	
Dec.	26.	" proceeds sales Dec. 19	175,518	64
1867.				
Jan'y	3.	" his ch. on 4th N. Y.	25,494	93
"	"	" fr's 394,508.35, sold Dec. 26	103,502	75
"	11.	" fr's 50,000, sold Jan'y 5	12,699	40
"	"	" bal. 100 gold for ⅜	1,257	71
"	22.	" Jas. A. Raynor	9,788	49
Feb'y	7.	" £5,000, sold Jan'y 25	32,356	81
"	"	" $600 gold sold	789	15
"	8.	" proceeds sales Jan y 30	46,887	55
"	9.	" " " Feb. 2	32,587	27
"	12.	" " " " 6	57,727	79
"	25.	" " " " 18	191,737	58
M'ch	14.	" his ch. on 4th Nat'l N. Y., Jan'y 8	76,910	75
"	6.	" proceeds sales Feb. 27	219,349	47
"	7.	" N'l B'k State N. Y	20,000	
"	13.	" proceeds Texas bonds, Feb'y 11	3,000	
"	29.	" dep. in 4th Nat'l N. Y. error	20,000	
May	9.	" proceeds £1,774 15 9	11,625	04
"	"	" " sales M'ch 28	292,451	57
"	"	" pro. M. B. Brady	4	86

582

			2,322,333	05

1866.				
Oct.	22.	By dep. with N'l B'k State of N. Y.	100,000	
Dec.	21.	" U. S. c'y by express	250,000	
"	26.	" dep. with 4th N'l N. Y.	76,266	60
"	28.	" £14,220§ sent L'pool	94,252	04
"	"	" 1st N'l Mobile	5,000	
1867.				
Jan'y	3.	" £20,000 sent to L'pool	128,997	68
"	11.	" 1st N'l N. O	17,500	
"	"	" 1st " Mobile	2,500	
"	"	" £11,000 sent to L'pool	70,770	34
"	"	" sundries per ⅜ Jan'y 5	97	52
"	15.	" dep. with 4th N'l N. Y.	100,000	
"	18.	" " " " " "	100,000	
"	26.	" N. Bansher's, d'f't on us.	675	38
"	31.	" 1st N'l N. O	14,000	
"	"	" 1st " Mobile	4,600	
Feb.	7.	" dep. with 4th N'l N. Y	13,631	80
"	"	" " " " "	46,887	55
"	"	" " " " "	200,000	
"	"	" dep. B'k State of N. Y.	159	85
"	"	" sundries per ⅜ Jan'y 25	78	93
"	11.	" dep. with 4th N'l N. Y	20,000	
"	12.	" " " " "	200,000	
"	"	" " B'k State of N. Y	130	
"	"	" ass't tr. N. O	225	
Feb.	12.	By loss on 100,000 gold in N. Y.	1,125	
"	"	" com. tel. oper. ⅜ Feb. 6	267	47
"	13.	" dep. with 4th N'l N. Y.	37,918	29
"	19.	" " " " "	30,000	
"	"	" $30,300 Mex. bonds	4,848	
Feb.	21.	" 1st N'l N. O	17,000	
"	"	" 1st " Mobile	3,000	
"	"	" dep. with 4th N'l N. Y	40,000	
"	23.	" " " " " "	9,788	49
"	25.	" " " " " "	107,561	77
"	"	" " " " " "	270	
"	"	" d'ft on T. P. May	100,000	
"	26.	" R. W. Doyle	500	
"	27.	" dep. b'k State of N. Y.	120	65
"	"	" telegram	4	75
"	28.	" loss per ⅜ Feb. 21	2,662	39
M'ch	6.	" dep. in 4th N'l N. Y	214,263	53
"	"	" " b'k State of N. Y.	1,300	
"	"	" " " " " "	123	55
"	"	" 1st N'l N. O	1,000	
"	9.	" H. H. Malone	130	
Apr.	1.	" dep. with 4th N'l N. Y.	100,000	
May	1.	" " " " "	50,000	
"	2.	" " " " "	20,000	
"	9.	" £5,000 sent to L'pool	33,384	68
			2,221,041	26

Account verified by me.
(Signed) LOUIS MEIG.

583 *Exhibit B C.—Filed with testimony May 2d, 1871.*

For value received the undersigned hereby assigns unto A. C. Graham eight hundred & ninety shares of the capital stock of the First National Bank of New Orleans, in the city of New Orleans, this 7 day of May, anno Domini 1867.

D. B. FORBES,
Trustee.

890 shares.

Exhibit C D.—Filed with testimony May 2d, 1871.

a/c sales £31,000 st'g, f'cs 50,000, for a/c of the First National Bank N. O.

547–8–51.	£	5,000	First Nat'l B'k N. O. on B'k L'pool,			@ 108½	$24,111 11	
549–50.	"	3,000	do.	do.	do.	@ 108½	14,466 67	
552–54.	"	3,000	do.	do.	do.	@ 108 3/16	14,457 63	
565.	"	2,000	do.	do.	do.	@ 108⅜	9,644 44	
566–71.	"	3,000	do.	do.	do.	@ 108½	14,466 67	
567–70.	"	5,000	do.	do.	do.	@ 108⅜	24,111 11	
3,665–75.	"	10,000	Canal B'king Co. on London Joint Stock B'k			@ 108½	48,222 22	
	£31,000						149,479 85	
			Com. ¼%				186 85	
								149,293 00
,838–9.	F'cs 50,000		Lafitte, Dufilho & Co. on M. N. Borde & Co.,			@ 522½–¼	9,557 42	
			Com. ¼%				23 89	
							Gold	$158,826 53
	$55,000		gold @ (sale of Feb'y 26th)			@ 138	$75,900	
	103,826 53		" a/c "	"	27	@ 138⅜	143,669 96	
	$158,826 53						$219,569 96	

584	Com. ¼% on gold	$198 53	
	Govt. tax " currency	21 96	
			220 49
	Currency		$219,349 47

E. & O. E.
New York, Feb'y 27th, 1867.

A. C. GRAHAM,
P'r D. H. LATHAM.

First National Bank N. O. in a/c cur't with A. C. Graham.

1867.			
Feb'y 21.	To balance as per a/c rend	$2,662 39	
" 23.	" draft of C. Bullitt	1,000	
" 25.	" deposited in Bank of the State N. Y.	1,300	
" 26.	" " " " " " " "	123 55	
" 27.	By net proceeds as per a/c sales annexed		219,349 47
" "	To balance to new a/c	214,263 53	
		$219,349 47	219,349 47
Feb'y 27.	By balance from old a/c		$214,263 53

E. & O. E.

A. C. GRAHAM,
P'r D. H. LATHAM.

585 *Exhibit D E.—Filed with testimony May 2d, 1871.*

NEW ORLEANS, *Sept.* 8, 1866.

Special meeting.

Present, Messrs. A. G. Graham, president; F. P. May, Miles Taylor and F. J. Herron.

Mr. Graham, president, requested leave of absence for three weeks to attend to business in New York, which was granted.

On motion, Thomas P. May, esq., was elected president pro tempore.

Adjourned.

D. B. FORBES, *Cash.*

NEW ORLEANS, *Oct.* 6, 1866.

Special meeting.

At a special meeting of the board of directors held to-day, present, T. P. May, president pro tem., F. J. Herron, W. M. Perkins, Miles Taylor. The resignation of A. C. Graham, esq., as president of the bank was laid before the board by the president pro tem., as follows:

NEW YORK, *Sept.* 26, 1866.

To the board of directors of the First National Bank of New Orleans, La.:

GENTLEMEN: I am most respectfully compelled to tender you my resignation as president of your institution, owing chiefly to my domes-
586 tic duties requiring of me a prolonged absence from your midst.

In severing so pleasant a connection, permit to offer you my very warm and sincere acknowledgements for the confidence and kindness that you have ever manifested towards me, and my heartfelt wishes for your future success and happiness.

I am, gentlemen, with high regard, very truly, yours,

(Signed) A. C. GRAHAM.

Whereupon it was unanimously

Resolved, That the board of directors accept the resignation of A. C. Graham as president of the bank, and that in doing so they can but express their profound regret that anything should have required him to sever is relations with them as their president; and

Resolved, That the board of directors, in behalf of the stockholders of the bank and themselves, now return to Mr. Graham their sincere thanks for the faithful and efficient manner in which he has discharged his duties as an officer of the bank from its organization to the present time; and it was further

Resolved, That the board now proceed to an election of president in place of Mr. Graham, resigned.

587 And an election having been holden, it appeared that Thomas P. May, esq., was unanimously elected president. It was then

Resolved, That in view of the peculiar of the monetary affairs of the country, that the board have a financial agent appointed to act for the bank in the city of New York, and it was then

Resolved, That A. C. Graham, esq., be appointed the financial agent.

Adj'd.

D. B. FORBES, *Cash.*

NEW ORLEANS, *Nov.* 26, 1866.

Regular meeting.

Present, Messrs. May, Taylor, Perkins.

Minutes of previous meeting read and approved.

On motion of Miles Taylor, esq., a dividend of ten per cent. for the last six months was declared, payable to the stockholders or their legal representatives, on and after the first Monday in December next.

Adjourned.

D. B. FORBES, *Cashier.*

NEW ORLEANS, *Jan'y* 15, 1867.

Regular meeting.

Present, T. P. May, Miles Taylor, W. M. Perkins, F. J. Herron, J. S. Whitaker, D. B. Forbes.

588 A certificate of James Graham, Thos. Janney and Alex. Bonneval, inspectors of election, that at an election by the stockholders on the 7th inst., for directors of this bank for the ensuing year, the following persons were elected: Thomas P. May, A. C. Graham, W. M. Perkins, F. J. Herron, Miles Taylor, J. S. Whitaker, Gordon Granger, D. B. Forbes, Robert Watson.

The minutes of the previous meeting were read and approved.

On motion, the board proceeded to the election of president, when Thos. P. May was unanimously re-elected for the ensuing year.

On motion of Miles Taylor,

Resolved, That section 4, of the by-laws of this bank, be amended by inserting after the word president, in the first line the words, vice-president.

On motion, the board then proceeded to the election of vice-president, when D. B. Forbes was unanimously elected.

On motion, Mr. Louis Meig was elected acting cashier of the bank.

The president appointed as the committee to examine the cash and other assets of the bank, Mess. Perkins, Whitaker, Herron and Taylor.

On motion, adjourned.

NEW ORLEANS, *March* 20, 1867.

Regular meeting.

589 Present, Mess. May, Taylor, Perkins, & Forbes.

The president stated that the object of the meeting was for the purpose of considering the propriety of purchasing property for a banking-house, in view of the fact that the lease of the property now occupied by us could not be renewed on favorable terms, even were it commodious enough for our business wants.

On motion of Mr. Perkins, the president was requested to obtain from C. E. Girardey & Co. a proposition for the sale to us of the property situated at the corner of Canal & Camp streets, belonging to Henry Hart, and to act upon it as he might deem best for the interest of the bank.

The' being no further business, the board adjourned.

NEW ORLEANS, *March* 25, 1867.

Special meeting.

Present, Mess. May, Taylor, Perkins, & Forbes.

The president read the following letter:

NEW ORLEANS, *March* 21, 1867.

Hon. T. P. MAY,
Pres't First National Bank:

D'R SIR: We are authorized to offer you the property forming
590 the corner of Canal & Camp streets, formerly occupied by M. Judson, for the sum of ninety-five thousand dollars, assuming fifty-

four thousand dollars, payable about 2d Jan'y, 1868, and the balance cash.

This property is under a lease until the 1st January 1868, at the rate of about $9,000 (nine thousand dollars) per annum, payable monthly in advance; $13,000 has since been offered for it. The credit portion bears 8 per cent. per ann. interest.

Hoping to hear from you at once, remain, sir, very respectfully, yours, &c.,

(Signed) C. E. GIRARDEY & CO.

To which letter the president informed the board that he had replied, offering ninety thousand dollars upon the same terms as specified, and received the following answer:

NEW ORLEANS, *March* 25, 1871.

Hon. T. P. MAY,
Pres't First National Bank of New Orleans:

D'R SIR: Your offer of ninety thousand dollars for the property situated on the corner of Canal & Camp streets on the terms mentioned in our note to you of 21st inst. has been submitted to the owner, Mr. Henry
591 Hart, and we take pleasure in now notifying you that we are authorized to accept it.

Very respectfully, y'r obedient serv't,

(Signed) C. E. GIRARDY & CO.,
Auct'rs.

On motion of Miles Taylor, esq.,

Resolved, That the president or the vice-president of this bank be authorized to complete the purchase of the property at the corner of Camp & Canal streets for a banking-house for the association agreeably to the terms proposed by C. E. Girardey & Co., for Henry Hart, in their letter of 25th inst.

Adjourned.

NEW ORLEANS, *April* 8, 1867.

Special meeting.

Present, Mess. May, Taylor, Perkins, & Forbes.

The minutes of the previous meeting was read and approved.

Statement of the bank read.

Mr. Forbes having retired from the meeting, Mr. May announced his resignation of the presidency of the bank, whereupon Mr. D. B. Forbes was elected president in his stead.

Adjourned.

Motion and order, case fixed.—Entered and filed June 5th, 1871.

592 U. S. circuit court, fifth circuit & dist. of Louisiana. In chancery.

CHAS. CASE, RECEIVER OF THE FIRST NATIONAL BANK of New Orleans,
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant, it is ordered that publication of the testimony taken herein do pass, and that the cause

be set down for hearing upon Thursday, the 8th inst., at 11 o'clock a. m., and that respondants be notified thereof.

Agreement, testimony of A. C. Graham introduced.—Filed June 6th, 1871.

U. S. circuit court, fifth circuit & dist. of Louisiana. In chancery.

CHAS. CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

It is agreed that all the testimony of A. C. Graham, taken under commission and offered in evidence in the suit of the Fourth National Bank of New York vs. The New Orleans and Carrollton R. R. Co. et al., being suit numbered 5359 upon the docket of this court, may be intro-
593 duced in evidence in this suit without objection, except as to its legal effect.

New Orleans, June 3d, 1871.
(Signed) J. D. ROUSE,
Solicitor for Compl'nt.
" LEA, FINNEY & MILLER,
For Def't, except G. T. B.
" L. E. SIMONDS,
Sol'r for N. O. & Car. R. R. Co., and G. T. Beauregard.

Supplemental and ameuded answer of G. T. Beauregard.—Filed June 7th, 1871.

U. S. circuit court.

CHAS. CASE, RECEIVER, &C.,
vs.
THE N. O. & CARROLLTON RAILROAD CO. & al.

The supplemental and amended answer of G. T. Beauregard to plaintiff's bill of complaint, says:

That he joins in and adopts as his own the supplemental and amended answer of the other defendants, filed by order of court on March 30th, 1871, and that he hereby avers that all the facts alleged in said amended answer are true and are adopted as part of this supplemental and
594 amended answer, as fully as if repeated here in totidem verbis.

Wherefore this defendant prays leave of this court to file this supplemental and amended answer, and that plaintiff's bill be dismissed, and for all proper decree in the premises as prayed for in his original answer.

(Signed) L. E. SIMONDS,
Solicitor.

We consent that the above supplemental and amended answer be filed, and that in its form as above it have the same effect as if there were set forth in it at length all the averments contained in the supplemental and amended answer of the N. O. and Carrollton Railroad Company, and certain other defendants, filed on March 30th, 1871.

(Signed) J. D. ROUSE,
Sol. for Complainant.

G. T. Beauregard being duly sworn, declares that all the matters and things contained in the foregoing answer and in the said answer therein adopted as his own, which are stated upon the personal knowledge of affiant, are true, and those stated upon the information of others he believes to be true.

(Signed) G. T. BEAUREGARD,
595 *Pres't.*

Sworn to & subscribed before me this 7th day June. 1871.
[SEAL.] (Signed) W. L. EVANS,
Second Justice Peace.

Note of evidence.—Filed June 8th, 1871.

CHAS. CASE, REC'R,
vs.
G. T. BEAUREGARD & AL. } No. 5931.

Complainant offered commission of Ch's Case, rec'r, and Exhibit A (page 30 of this transcript), B (page 41), C (page 47), D (page 54), E (page 60), F (page 67), G (page 259), H (page 74), I (page 82), J (page 98), K (page 109), L (page 119), M (page 146), N (page 149), O (page), and note of $4.000 (page 256), also bill of exchange marked P (page 257), note and protest marked Q, note of Forbes marked R, note of Deslondes, S, and note marked T. Also notice of warrant in bankruptcy of T. P. May, marked U.

It is admitted that May filed his petition and was adjudged a bankrupt on May 1st, '71.

596 Complainant offered testimony of L. Meig (page 522); Wm. M. Perkins (page 545); D. B. Forbes (page 549); and P. Helm (page 561); Louis Meig, recalled (page 567).

Complainant offered the testimony of Frank F. Case (page 571); and the five exhibits annexed (page 576–591). Also that of Sterne Chittenden (page 361). Deposition of A. C. Graham taken under commission in suit No. 5359 of this court, & by-laws of 1st National Bank of N. Orl's. Elmore & King, solicitors for 4th National Bank, N. Y., offered Doc't A, No. 1.

All the def'ts, except 4th Nat'l Bank and T. P. May, offered power of attorney of A. C. Graham to May (page 346). Def'ts offered testimony of J. Hernandez (page 477); Geo. Binder (page 482); A. Bonneval (page 480); G. T. Beauregard (page 456); T. P. May (page 430); L. Meig (page 424); S. R. Proctor (page 399); Peter McBride (page 443); & the 19 exhibits referred to in above testimony (pages 509–521); also 60 exhibits, marked from 1 to 60 (pages 486–509), and testimony of officers of the treasury, marked B^2.

Lea, Finney & Miller, on behalf of N. O. & C. R. R. Co., offered agreement B^3, subject to the objections of all parties. Also account of
597 T. P. May with First National Bank, marked B^4.

Commission of Charles Case, receiver, referred to in note of evidence, and offered by complainant June 8th, 1871.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
Washington, D. C., May 20th, 1867.

Notice having been received by me that The First National Bank of

New Orleans, a national banking association formed pursuant to the laws of the United States, and located in the city of New Orleans, Louisiana, had failed to redeem its circulating notes when payment thereof was legally demanded at the office of said association, and being satisfied from the protest of one of the circulating notes of the said association produced to me, and from information by letter received from John J. Knox, esquire, Deputy Comptroller of the Currency, that the said association has failed to redeem in lawful money of the United States its circulating notes, when payment thereof was legally demanded during the usual hours of business at the office of said
598 association, and is in default—

Now, therefore, I, Hiland R. Hulburd, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, do hereby appoint Charles Case, of the city of New Orleans, in the State of Louisiana, receiver for "The First National Bank of New Orleans," with all the powers, duties and responsibilities given to or imposed upon a receiver, under the provisions of the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864.

In witness whereof I have hereto subscribed my name, and have caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.] (Signed) HILAND R. HULBURD.
Comptroller of the Currency.

599 *Note and protest marked Q, referred to in note of evidence, and offered by complainant, June 8th, 1871.*

[5 cents U. S. int. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that, on this twentieth day of June, in the year one thousand and eight hundred and sixty-seven, at the request of C. Case, receiver, holder of the original note, whereof a true copy is on the revers' hereof written, I, Pierre Charles Cuvellier, a notary public in and for this city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, by my deputy, Martin G. Kennedy, presented said note at the First National Bank of New Orleans, in this city, where it is made payable, during banking hours, and to the proper officers, and demanding payment thereof, was answered that no funds had been placed in the bank to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well
600 against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested, in the presence of Edward Allen and Martin G. Kennedy, witnesses, signed M. G. Kennedy, E. Allen, P. Chas. Cuvellier, not. pub.

A true copy of the original, which is stamped according to law and on file in my office.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) P. CH'S CUVELLIER,
Notary Public.

Note attached to protest.

$50,000.] NEW ORLEANS, *March 19th*, 1867.

Ninety days after date I promise to pay to the order of Thos. P. May, fifty thousand dollars, value received, with interest at the rate of 8 per c't. per annum from maturity until paid.

Payable at 1st Nat'l B'k of N. O.

601 M. T. STEEL.

Due.
No. . June 20.

(Endorsed:) T. P. May. $25.00 U. S. int. rev. stamp.

Note marked R, referred to in note of evidence and offered by complainant, June 8th, 1871.—Original withdrawn· copy filed June 19th, 1871.

$20,284.] NEW ORLEANS, *March* 18, 1867.

Sixty days after date I promise to pay to the order of Thomas P. May, twenty thousand two hundred and eighty-four $\frac{0}{100}$ dollars, at the First National Bank of New Orleans, value received.

D. B. FORBES.

No.
Due May 17–20

(Endorsed:) T. P. May. $10.05 U. S. int. rev. stamp.

Note marked S, referred to in note of evidence and offered by complainant, June 8th, 1871.—Original withdrawn, copy filed June 19, 1871.

$2,000.] NEW ORLEANS, *March 14th*, 1867.

Ninety days after date I promise to pay to Thos. P. May or
602 order, two thousand dollars at the First National Bank.

E. A. DESLONDE.

No.
Due.

[Endorsed:] T. P. May.

Protest and notice of protest is hereby waived on this note June 15, 1867.

T. P. MAY.
P'r E. A. DESLONDE.

[$1.00 U. S. int. rev. stamp.]

Note marked T, referred to in note of evidence and offered by complainant, June 8th, 1871.—Original withdrawn, copy filed June 19th, 1871.

$5,000.] NEW ORLEANS, *Nov'r 30th*, 1866.

On demand after date, I promise to pay to Thos. P. May or order,

five thousand dollars at First National Bank of New Orleans, value received.

T. P. MAY.

No.
Due.

(Endorsed:) T. P. May.

Demand notice & protest waived.

T. P. MAY.
P'r E. A. DESLONDE.

[U. S. int. rev. stamp, $7.50.]

CLERK'S OFFICE.

I certify the foregoing to be true copies of the original notes on file under date of 8th June, 1871, and withdrawn by complainant's att'y under agreement on file.

New Orleans, June 19th, 1871.

[SEAL.] (Signed) F. B. VINOT,
D'y Clk.

603 *Notice of warrant in bankruptcy of T. P. May, marked U.—Referred to in note of evidence and offered by complainant, June 8th, 1871.*

OFFICE OF UNITED STATES MARSHAL,
DISTRICT OF LOUISIANA,
New Orleans, May 3, 1871.

To Chas. Case, receiver, &c., of New Orleans, State of La., creditor of Thomas P. May, bankrupt.—No. 1127:

You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the district of Louisiana, against the estate of Thomas P. May, of St. John the Baptist Parish, adjudged a bankrupt upon his own petition, that the payment of any debts and delivery of any property belonging to such bankrupt to him or for his use, and the transfer of any property by him, are forbidden by law; that a meeting of the creditors of said bankrupt, to wit:

604 Names of creditors.	Residence.	Amount.
The United States	District attorney, custom-house	Unknown.
Do. do. for taxes 1866	do. do.	Unknown.
Do. do.	do. do.	$1,080,000
State of Louisiana, taxes 1866	Attorney-general State, New Orleans	Unknown.
Do. do.	State treasurer, New Orleans	Unknown.
United States, by judgment on bond of L. B. Collins	U. S. attorney, New Orleans	25,000
J. B. Walton & Deslonde, auctioneers	New Orleans	Unknown.
Bloomfield & Steel	do.	Unknown.
Thomas Mulligan	do.	Unknown.
Chas. Case, rec'r 1st Nat. B'k N. O. Draft on A. C. Graham	do.	125,000
Chas. Case, rec'r 1st Nat. B'k N. O. Steel's note	do.	50,000
Chas. Case, rec'r 1st Nat. B'k N. O. D. B. Forbes' note	do.	20,000
Chas. Case, rec'r 1st Nat. B'k N. O. E. A. Deslonde's note	do.	5,000
Chas. Case, rec'r 1st Nat. B'k N. O. E. A. Deslonde's note	do.	2,000
Chas. Case, rec'r 1st Nat. B'k N. O. A. C. Graham's draft	do.	100,000

605 to prove their debts and choose one or more assignees of the estate, will be held at a court of bankruptcy to be holden on the

tenth day of May, A. D. 1871, at 12 o'clock m., at No. 126 Exchange alley, before Donatien Augustin, register.

(Signed(S. B. PACKARD,
U. S. Marshal, Messenger,
Per JAMES E. AYER,
Deputy.

[Two-cent U. S. postage stamp.]

Deposition of A. C. Graham, taken under commission in suit No. 5359. Referred to in note of evidence, and offered by complainant and filed June 8th, 1871.

Interrogatories propounded to Augustus C. Graham, New York.

1st. Please state whether the interest standing in your name in the New Orleans and Carrollton Railroad Company, at the time it was conveyed by you to the Fourth National Bank of New York, was not really belonging to Thomas P. May. State whether you paid any por-
606 tion of the monies requisite to entitle you to said interest; and, if yea, state from what fund the said monies were drawn to make the requisite payments.

(Signed) CYPRIEN DUFOUR,
Solicitor for Defendants.

Augustus C. Graham, being duly sworn, says, in answer to the interrogatory propounded to him in the annexed commission:

The said interest belonged to me and not to Thomas P. May. I did pay monies that entitled me to said interest. The moneys so paid were my own private funds.

(Signed) A. C. GRAHAM.
(Signed) JAMES H. FAY,
Commissioner, &c.

United States circuit court, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true extract from the original, filed with and annexed to a commission issued on behalf of defendants
607 on the 24th July, 1868, in a cause entitled Fourth National Bank of New York vs. New Orleans and Carrollton Railroad Co. & als., No. 5359 of the docket of said court.

New Orleans, June 7th, 1871.
[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

Interrogatory 2d. Were you the bona fide owner of the said interest in the New Orleans and Carrollton Railroad Company which you transferred to the bank?

To second interrogatory witness deposes: I was.

(Signed) A. C. GRAHAM.

Subscribed and sworn to before me this 3d day of August, 1868.

(Signed) CHARLES T. MIDDLEBROOK,
Commissioner.

United States circuit court, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true extract from the original filed with and annexed to a commission issued on behalf of complainants
608 on June 30th, 1868, in a cause entitled Fourth National Bank of New York vs. New Orleans and Carrollton Railroad Co. & als., No. 5359 of the docket of said court.

New Orleans, June 8th, 1871.

(Signed) F. B. VINOT, *D'y Clk.*

609 *By-Laws of the First National Bank of New Orleans, offered in evidence and filed June 8th, 1871.*

United States circuit court, district of Louisiana.

No. 5931.

BY-LAWS, ETC.

Elections.

SECTION I. The regular annual meetings of the stockholders of this bank, for the election of directors, shall be held at its banking-house on the second Tuesday of January of each year, between the hours of ten and four of said day. Thirty days' notice of the time and object of such meeting shall be given by the cashier of this bank, by publication in such daily papers as the board of directors may indicate.

And it shall be the duty of the board of directors, within one month previous to the time of said election, to appoint three stockhold-
610 ers to be judges of said election, who shall hold and conduct the same, and who shall, after the election has been held, certify under their hands to the cashier of this bank the result thereof, and the names of the directors elect.

SECTION II. The cashier, upon receiving the certificates of the judges of the election as aforesaid, shall cause the same to be recorded upon the minute-book of the bank, and shall notify the directors elect of their election and of the time at which they are required to meet at the banking-house of this bank for the purpose of organizing a new board. If at the time fixed for the meeting of the directors elect there should not be a quorum present, the members may adjourn from time to time until a quorum is obtained.

SECTION III. If, for any cause, the annual election of directors should not be held on the second Tuesday of January, the board shall order the election to be held on some other day, of which special election notice shall be given, judges appointed, and returns made, and
611 directors elect notified, according to the requirements and provisions of section 2 of these by-laws. The board shall have power to call a general meeting of the stockholders at any time they may deem proper, giving thirty days' notice of the time and place and object of such meeting in two newspapers.

Officers.

SECTION IV. The officers of this bank shall be a president, cashier, teller, book-keeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business.

SECTION V. The president shall hold his office (unless he shall resign or become disqualified, or be removed) for the current year for which the board, of which he shall be a member, was elected. In case a vacancy in the board of directors or in the office of president shall occur during any current year, it shall be filled by the board.

612 SECTION VI. The cashier and the subordinate officers shall be appointed to hold their offices respectively during the pleasure of the board.

SECTION VII. The president of this bank shall be responsible for all such sums of money and property of every kind as may be entrusted to his care, or placed in his hands by the board of directors or by the cashier, and shall give bond in the penalty of $50,000, with security, to be approved by the board, conditioned for the faithful discharge of his duties as such president, and that he will faithfully apply and account for all sums of money and other property of the bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors, or to any other person or persons authorized to demand and receive the same.

SECTION VIII. The cashier of this bank shall be responsible for
613 all the moneys, funds, and valuables of this bank, and shall give bond, with security, to be approved by the board, in the penal sum of $50,000, conditioned for the faithful and honest discharge of the duties as such cashier, and that he will faithfully apply and account for all such moneys, funds, and valuables, and deliver the same on proper demand to the order of the board of directors of this bank, or to the person or persons authorized to receive them.

It shall be the duty of the cashier, appointed during the pleasure of the board, to countersign, at the bank, all bills or notes to be signed by the president, or by order of the board; carefully to observe the conduct of all persons employed under him, and report to the board such instances of neglect, incapacity, or bad conduct as he may discover in any of them; daily to examine the settlement of the cash accounts of the bank; to take charge of the cash, and whenever the actual
614 amount materially disagrees with the balance of the cash account, report the same to the president and directors without delay; to attend all meetings of the board, keep a fair and regular record of its proceedings; give such information to the board as may be required; consult with committees when requested on subjects referred by the board, and also to perform such other services as may be required of him by the board.

SECTION IX. The teller shall be responsible for all such sums of money, property, and funds of every description as may from time to time be placed in his hands by the cashier, or otherwise come into his possession as teller, and shall give bond, with security to be approved by the board, in the penalty of $20,000, conditioned for the honest and faithful discharge of his duties as teller, and that he will faithfully apply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his
615 office as teller to the order of the board of directors aforesaid, or to such persons or persons as may be authorized to demand and receive the same.

SECTION X. Insolvency on the part of a director vacates his seat in the board, and the evidence of a director's name remaining for a period of ten days under protest in any bank in the city of New Orleans will be considered by the board as conclusive in regard to his insolvency.

SECTION XI. The notary of the bank shall give bond for $10,000,

with security to be approved by the board, for the faithfull discharge of his duties as such notary; and all other officers and employees of the bank shall give bonds for $5,000 each, to which shall be added an affirmation, the tenor of which shall be that they will faithfully and diligently perform their respective duties; that they will keep inviolate all information connected with the operations of the bank; that
616 they will give immediate information to the cashier of any and all delinquencies of which they may be cognizant of any clerk or clerks; and that they will in every particular act for the best interests of the institution.

SECTION XII. In case of the absence of the president, from sickness or any other cause, the board may elect one of their number as president pro tem., with full power to act in his stead.

Seal.

SECTION XIII. The following is a description of the seal adopted by the board of this bank: The arms of the State of Louisiana with motto of the State; the whole surmounted by the title of the bank.

Conveyance of real estate.

SECTION XIV. All transfers and conveyances of real estate shall be made by the bank, and under the seal thereof, in accordance with the orders of the board, and shall be signed by the president and cashier.

Increase of stock.

SECTION XV. Whenever an increase of stock shall be determined upon, in accordance with the provisions of the articles of as-
617 sociation of this bank, it shall be the duty of the board to notify all the stockholders of the same, and to cause a subscription to be opened for such increase of capital.

In the increase of capital each stockholder shall have the privilege of subscribing for such number of shares of the new stock as he may be entitled to subscribe for, according to his existing stock in the bank.

If any stockholder should fail to subscribe for the amount of stock to which he may be entitled, the board of directors may determine what disposition shall be made of the privilege of subscribing for the unsubscribed stock.

SECTION 16. The bank shall be kept open for the transaction of business from 10 o'clock a. m. until 3 o'clock p. m., and such other time or times as the pleasure of the board may determine every day in the year except Sunday, Christmas, Good Friday, Fourth of July, first
618 and eighth of January, and such other days and hours as may be excepted by a special order of the board.

SECTION 17. The books and accounts of the bank shall be regularly balanced on the fourth Mondays of May and November, when the half-yearly dividends shall be declared and published in at least two of the public newspapers in the city of New Orleans; and shall be payable on or after the first Monday in June and first Monday in December to the stockholders or their lawful representatives. The said settlement shall be examined *shall be examined* and certified by a committee to be appointed for that purpose. The semi-annual, quarterly, and monthly reports shall be made according to the provisions of sections 24 and 45 of the act under which this bank is organized.

SECTION 18. The bank shall take charge of the cash of all such persons as shall choose to place it there free of expense, and shall keep it subject to the order of the depositor, payable at sight; and shall
619 also receive special deposits of *ign*ots of gold and bars of silver for safe-keeping at the risk of the depositor.

SECTION 19. The bank shall receive and pay all specie coins (except Spanish doubloons), according to the rates and value that have been, or shall hereafter be established by the Congress of the United States.

SECTION 20. There shall be two discount days in each week, Tuesdays and Fridays, and all bills and notes offered for discount shall be delivered to the bank on the days next *proceeding* the days of discount (Mondays and Thursdays).

SECTION 21. It shall be the duty of the cashier to lay before the board, at every discount day, a general statement of the accounts of the bank.

Examinations.

SECTION 22. There shall be appointed by the board, every month, a committee whose duty it shall be to examine into the affairs of
620 the bank, to count its cash, and compare its assets and liabilities with the balance on the general ledger, for the purpose of ascertaining whether or not the book' are correctly kept and the condition of the bank corresponds therewith, and whether or not the bank is in a sound and solvent condition; the result of which examination shall be reported to the board at their next regular meeting.

SECTION 23. No director, without special authority, shall be permitted to inspect the cash account of any person with this bank.

SECTION 24. On each applicant for discount every director, who may be present, shall be held to give his opinion for or against the same; and no discount shall be made without the consent of three-fourths of the directors present; and all notes and bills discounted shall be entered in a book to be called the credit book, in such manner as to discover to the board, at one view, on each discount day, the amount
621 which any person is discounter or is indebted to the bank either as payer or as endorser.

SECTION 25. On every discount day the name of every person who shall have overdrawn the bank since the last discount day shall be reported to the board, and in no instance will this bank release or discharge to any debtor where the debt arises from overdraft; and every officer who shall knowingly suffer an overdraft to be made on the bank, without communicating it to the president or cashier, shall be dismissed from the service of the bank.

SECTION 26. If any bill or note belonging to this corporation shall not be paid before the shutting of the bank on the last day of grace, such bill or note shall be forthwith protested, and while such bill or note remains unpaid no discount or accommodation shall be granted to any drawer, *exceptor*, or endorsor of the same. All bills and notes for collection must be lodged in the bank ten days previous to their maturity.

622 SECTION 27. All notes discounted by the bank shall be charged to the account of the payer or payers when due.

SECTION 28. All notes discounted to meet the payment of any note or bill due the bank shall not be drawn for nor applied to any other purpose whatever.

SECTION 29. All bills and notes offered for discount in the First Na-

tional Bank of New Orleans, drawn or endorsed by persons living out of the limits of the city of New Orleans, shall be made payable at some bank it said city.

SECTION 30. Every person who opens an account and transacts business with this bank shall subscribe his name in a book, to be kept for that purpose, to be called the book of signatures, and all the persons who compose any house, keeping an account with this bank, shall subscribe their names and the signature of the firm in this book.

SECTION 31. No clerk or servant of this bank shall keep an
623 account therein, but shall receive his monthly from the cashier.

Contracts.

SECTION 32. All contract', checks, drafts, etc., shall be signed by the president or cashier.

Meetings.

SECTION 33. The regular meeting of the board shall be held on Tuesdays and Fridays, at 1 o'clock, a. m. Special meetings may be called by the president or cashier.

Quorum.

SECTION 34. Two-thirds of the directors, including the president, shall be a quorum to do business.

SECTION 35. The proceedings of the board of directors, when conducting their business as a deliberat'e body, shall be governed by the following articles:

1st. When the president takes the chair, the members shall take their seats.

2d. The minutes of the preceding meeting shall be read before the board proceeds to any other business, and no debate shall be admitted, nor question taken at such reading, except as to errors and
624 inaccuracies. The state of the bank shall then be read, and the discounts settled.

3d. The president shall be the judge of order, and his decision shall be immediately submitted to, unless two members require an appeal to the board. He shall name all committees unless herein otherwise provided, or unless the board shall otherwise determine; and he shall call special meetings of the board whenever, in his opinion, the business may require it, or on the request of three members of the board.

4th. Every member presenting a paper to the chair shall first state its general purport, and every member who shall make a motion, or offer a resolution, or speak on any subject under discussion, shall rise and address the board.

5th. No debate shall be entered into on any motion or resolution, until it shall be stated from the chair; and all motions shall, if requested by the president or by two members, be reduced to writing; and no member shall speak more than twice upon any on' question with-
625 out leave of the president.

6th. While a resolution is under consideration no motion shall be made except to amend, divide, commit, or postpone it; but it shall be in order at any time, on the call of three members, to take the previous question, which shall be, "Will the board at this time act on the

subject?" and if it shall be decided in the affirmative, the debate may be continued. A motion to adjourn shall always be in order, but shall be decided without debate.

7th. A member may call for the division of a question or resolution where the sense will admit of it; but no amendment which tends to destroy the general sense of the clause of a resolution shall be admitted.

8th. If business of different kinds shall be called for at the same time by different members, the president will judge and give preference accordingly.

9th. The yeas and nays shall be taken on any question, if called for by one member, previous to the decision on such question; but
626 no motion for reconsideration shall be permitted unless made and seconded by members who were in the majority on the original question.

10th. At the request of any two of the board, the names of the members who make and second a motion shall be entered on the minutes.

SECTION 36th. It shall not be allowed either to the president and directors or to any of the officers of the bank to disclose her confidential affairs, or the opinions and manner of voting of any of the directors; wherefore every director and officer of the bank, on entering in office, shall be considered as having pledged his honor to observe faithfully this rule, as being implied and understood in this oath which they are required to take by the fourteenth section of the act of incorporation; and it shall be the duty of the president and cashier to give cognizance to this by law—the one to the members of the board, and the other to the officers of the bank, on their respective installations in office.

627 *Transfers of stock.*

SECTION 37th. All transfers of stock of this institution shall be made upon a book to be kept in the bank, to be called the transfer book, and all transfers may be made by the proprietor or his lawful attorney; the certificate of stock to be surrendered at the time the transfer is made.

628 *Document A No. 1, referred to in note of evidence and offered by Fourth National Bank of New York, June 8th, 1871.*

No. 442.] RECEIVER'S OFFICE,
FIRST NATIONAL BANK OF NEW ORLEANS,
New Orleans, Dec. 8th, 1869.

This is to certify that Billopp Seaman, cashier of the Fourth National Bank of the City of New York, has this day made legal and satisfactory proof that he is a creditor of the First National Bank of New Orleans to the amount of fifty-five thousand four hundred and sixty dollars and nineteen cents, upon the following claim, to wit: For balance due the said Fourth National Bank on an account rendered to Nov. 12, 1868, and attached to the affidavit of Billopp Seaman, dated November 30th, 1869, and with me this day filed. But the amount certified due, as aforesaid, is allowed as a claim against said First National Bank, subject to any offsets or credits that have accrued or may accrue from any of the items or claims specified in Schedule B, also attached to said affi-
629 davit, a copy of which said schedule is hereto attached.

This certificate is valid only to authorize the bona fide holder thereof to receive such pro rata dividends as may be declared by the Comptroller of the Currency in favor of the creditors of this bank.

No assignment of this claim, or any portion thereof, will be recognized in the payment of dividends, unless notice of such assignment is given to the receiver and entered upon his books before such dividends are declared.

[SEAL.] (Signed) C. CASE,
Receiver of First National Bank, New Orleans.

Copy of Schedule B, attached to certificate No. 442, dated Dec. 8th, 1869.

a. The Fourth National Bank of the City of New York received from the First National Bank of New Orleans and has collected the following drafts, not credited in above account:

1st. May, 1867.—John Christean Lindauer (gold), $440.15.

The proceeds of this draft were claimed by and have been re-
630 covered in a suit by Lindauer from the Fourth National Bank, and an appeal is now pending.

2d. May, 1867.—John B. Dod, $821.91.

The proceeds of this draft are claimed by Dod, and a suit therefor is now pending.

3d. May, 1867.—R. L. Macmurdo and Francis Rawle, $8,500.

Of this amount and interest the Fourth National Bank received, April 14, 1868, the sum of $9,342.40, but Mac Murdo & Rawle claim the same, and have recovered judgment therefor, and an appeal is now pending.

b. The Fourth National Bank also received from the agent in New York of the First National Bank of New Orleans,

May, 1867.—Five drafts upon the Bank of Liverpool, together £10,000. These have not been collected, but an action in chancery in England is now pending to collect the same.

c. The Fourth National Bank also hold coupons of the city of New Orleans, paid by it on account of the First National Bank of New Or-
leans, to the extent of $15,720, nominal value, which the said
631 Fourth National Bank claim to hold as security for the sum of $15,505.67, paid by it up to 16th May, 1867, on account of said coupons.

The Fourth National Bank has also received from A. C. Graham, to secure his individual guaranty made to said bank prior to May, 1867, to protect it against all overdrafts by the First National Bank of New Orleans, a transfer of the following property:

1. His interest in the New Orleans and Carrollton Railroad Company, or the lease thereof.

2. His interest in a certain plantation in the State of Louisiana, upon the Mississippi River, about 27 miles above the city of New Orleans, known as the Payne place.

3. His individual balance of deposit with the said Fourth National Bank on 16th May, 1867, amounting to $25,000.

From or out of the above nothing has been received by the Fourth National Bank except the said sum of $25,000, which the Fourth National Bank desires to credit as may be determined to be in accordance with the respective rights of all parties.

(Signed) BILLOPP SEAMAN.

632 (Signed) ELIE BONIN,
Notary Public, N. Y. City & Co.

Power of attorney of A. C. Graham to T. P. May, referred to in note of evidence, offered by all the defendants except T. P. May and Fourth

National Bank of N. Y., is Exhibit E, annexed to answer of G. T. Beauregard, and is transcribed on page 346 of this transcript.

Testimony of officers of the Treasury of the U. S., marked B^2, referred to in note of evidence, offered by defendants, is transcribed on pages 372–385 of this transcript.

Agreement B^3, referred to in note of evidence, offered by the New Orleans and Carrollton Railroad Company, & filed June 8th, 1871.

U. S. circuit court.

CHAS. CASE, RECEIVER, vs. G. T. BEAUREGARD & ALS. } No.

It is admitted that the transcript from the books of the Treasury, certified by the register and authenticated according to law, would show an indebtedness of Thomas P. May, as assistant treasurer of the United States, on the 16th May, 1867, of one million and seventy-six thousand seven hundred and ninety-two $\frac{29}{100}$ dollars, and that this
633 shall have effect the same as if said transcript was produced.

(Signed) J. D. ROUSE,
Sol. for Complainant.

Account of T. P. May with First National Bank of New Orleans, marked B^4, referred to in note of evidence offered by the New Orleans and Carrollton Railroad Company, is transcribed on pages 393 to 398 of this transcript.

Hearing and continuance.—Extract from the minutes, April term, 1871.

NEW ORLEANS, *Thursday, June 8th*, 1871.

Court met pursuant to adjournment.

Present, Hon. J. P. Bradley, associate justice Supreme Court.

CHAS. CASE, REC'R, vs. G. T. BEAUREGARD ET AL. } No. 5931.

This cause was called for trial, J. D. Rouse & P. H. Morgan for complainant, L. E. Simonds, Elmore & King, U. S. Att'y, J. A. Campbell, Lea, Finney & Miller for the defendants.

And after hearing the pleadings, evidence, and argument, the cause is continued till to-morrow, at 11 a. m.

634 *Submission of case.—Extract from the minutes of June 9th*, 1871.

CHAS. CASE, REC'R, vs. G. T. BEAUREGARD & AL. } No. 5931.

This cause was resumed, and after hearing further argument, the court took time to advise.

Decree.—Extract from judgment book.

United States circuit court, fifth circuit and district of Louisiana. April term, 1871.

NEW ORLEANS, *Wednesday, June 14th*, 1871.

Court met pursuant to adjournment.

Present, Hon. J. P. Bradley, associate justice of the Supreme Court.

CHAS. CASE, REC'R, *vs.* G. T. BEAUREGARD & AL. } No. 5931.

For reasons orally assigned by the court, it is ordered, adjudged and decreed that there be judgment for the defendants' dismissing complainants' bill with costs.

Decree rendered June 14th, 1871.

Decree signed June 15th, 1871.

(Signed) JOSEPH P. BRADLEY,
635 *Associate Justice Sup. Court, U. S.*

Commission of F. F. Case.—Filed June 3d, 1876.

TREASURY DEPARTMENT,
OFFICE COMP'R CURRENCY,
July 8th, 1874.

Whereas Charles Case was duly appointed and commissioned receiver of "The First National Bank of New Orleans" in the State of Louisiana on the 20th day of May, 1867, and whereas said Charles Case proposes to resign his commission as receiver of said bank, leaving the said receivership vacant.

Now therefore be it known that I, John Jay Knox, Comptroller of the Currency, do hereby appoint Frank F. Case to be receiver of "The First National Bank of New Orleans," to take effect upon the resignation of said Charles Case, with all the powers, duties and responsibilities given to or imposed upon a receiver under the provisions of the act entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3d, 1864.

636 In witness whereof I have hereunto subscribed my name and have caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.] (Signed) JOHN J. KNOX,
Comptroller of the Currency.

Petition and order for appeal.—Filed June 3d, 1876.

U. S. circuit court, fifth circuit and district of Louisiana.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

To the honorable the Supreme Court of the United States:

The appeal of the First National Bank of New Orleans respectfully showeth:

That heretofore the said complainant, the First National Bank of

New Orleans, by Charles Case, the receiver thereof, filed its bill in said circuit court against the defendants, Gustave T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander
637 Bonneval, G. W. Binder, the New Orleans & Carrollton Railroad Company, and the Fourth National Bank of New York, and the said defendants answered said bill; general replications to said answers were filed by the complainant, and proof taken and filed in the record.

That upon the 14th day of June, 1871, a final decree was made and pronounced in the cause, whereby it was in substance adjudged and decreed that said complainant's bill be dismissed, and it was dismissed accordingly.

And afterwards the said Charles Case, having by his resignation ceased to be such receiver of said bank, Frank F. Case was duly appointed by the Comptroller of the Currency in his place and stead as such receiver, as appears by a copy of his appointment now on file in the office of the clerk of said circuit court.

Wherefore the said complainant, by said Frank F. Case, receiver as aforesaid, appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and
638 proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that said Supreme Court will proceed to hear the said cause anew, and that said decree of the circuit court and every part thereof may be reversed, and a decree made in conformity with the prayer of said bill, and granting the relief asked by complainant, with costs, or such other decree as to said Supreme Court shall seem just.

(Signed) J. D. ROUSE,
Solicitor for Appellant.

Order.

Let the appeal be granted in this cause, as above prayed for, returnable according to law, upon the complainant giving bond with solvent surety in the sum of five hundred dollars.

New Orleans, June 3d, 1876.

(Signed) W. B. WOODS, *Judge.*

RECORD OF SUIT NO. 7036 RESUMED.

Circuit court of the United States, fifth cidcuit and district of Louisiana.

CHARLES CASE, F. F. CASE, SUBSTITUTED RECEIVER of the First National Bank of New Orleans,
versus
THE NEW ORLEANS AND CARROLLTON RAILROAD Company and others.

639 *Copy of the original opinion of Mr. Justice Bradley in case No. 5931 U. S. circuit court, referred to in and made part of note of evidence, and offered by complainant March 7th,* 1876.

CHAS. CASE, RECEIVER OF THE FIRST National Bank of New Orleans,
vs.
G. T. BEAUREGARD & AL.

On the 13th of May, 1867, the First National Bank of New Orleans

was closed and its affairs were taken in charge for examination by a special agent of the Treasury Department, and, being found insolvent, a receiver was appointed under the 50th section of the currency act. Amongst the assets was an overdrawn account of "G. T. Beauregard, lessee," to the amount of $72,008\frac{89}{100}$, and a note of same party for $40,000, dated September 14th, 1866, payable on demand, and a bill of exchange drawn by T. P. May on A. C. Graham, of New York, for $125,000, dated March 19th, 1867, but not accepted. These documents had been credited to the account of "G. T. Beauregard, lessee," at their respective dates; and without these credits the account would have stood overdrawn $237,008\frac{89}{100}$.

640 "G. T. Beauregard, lessee," was the business designation of a partnership consisting of T. P. May, A. C. Graham, and G. T. Beauregard, who had leased the New Orleans and Carrollton Railroad in Beauregard's name for 25 years commencing 16th April, 1866, at $20,000 a year rent, with an annual increase of $500, and had entered into partnership for the purpose of carrying on the road during the lease. Beauregard was to superintend the operation, and May and Graham were to furnish the requisite capital to the amount of $150,000 apiece, and the profits were to be equally divided between them. May and Graham were interested in the bank and had been its principal managers, Graham being president from July 12th, 1865, to July 12th, 1866, and May being president from thence until just before the failure of the bank.

The note and bill of exchange were drawn by May, and were credited to the partnership account by his directions.

The checks on the account had been drawn by Beauregard in carrying on the operations of the road. The credit side, with the ex-

641 ception of the two credits referred to, was made of deposits derived from the daily receipts of the road and several payments made by Graham of $20,000 at a time.

The whole account from April 16th, 1866, to May 11th, 1867, amounted to about $460,000 on the credit side and $532,000 on the debit side.

The accounts of the railroad or partnership business for the same period were produced and show an expenditure of moneys for current working expenses, rent of road, purchase of property (real and personal), reconstruction of track, rolling stock, &c., to the amount of about $556,000, most of which was drawn through the bank account aforesaid. Of this sum about $35,000 was paid for real estate for the use of the road, about $130,000 for reconstructing railroad track, about $155,000 for current (5) working expenses, and about $88,000 for stable buildings, car sheds, houses for employees, &c. The rest was for horses, cars, and other incidents to the railroad business. The rent and current expenses during the period in question exceeded the receipts.

It was conceded that the firm was insolvent at the time of the failure of the bank.

642 From this statement it is perfectly evident that $237,000 of the money of the bank went into the operations, improvements, and purchases of the firm in respect of the railroad, and this fact is one ground of relief sought by the present bill. The receiver of the bank, by whom it is filed, seeks to follow this money into the hands of the present holders of the property, especially the new property purchased during the year, and to charge them as trustees for the bank.

The further facts on which he bases his title to relief are as follows: May, besides his operations in the bank and railroad, was assistant

treasurer of the United States; and at the time of the failure of the bank was found to be a defaulter to the government to the amount of over one million of dollars. To secure this indebtedness, on the 14th May, 1867, he assigned to the United States a large amount of property, and amongst other things all his interest in and to the Carrollton Railroad Company, and the property, stock, and appurtenances thereof, valued at $480,000. On the 16th of the same month he further
643 assigned all his and Graham's interest in said railroad and property, pretending that the share of Graham was really his, and acting under a general power of attorney from Graham to him, which has been produced and proven in the cause. Graham, however, denies that May had any claim to his share of the partnership property, repudiates his assignment of it, and in fact himself assigned all his interest therein on the 8th of May, 1867, to the Fourth National Bank of N. York as security for certain liabilities which that bank had contracted on account and for the benefit of the First National Bank of N. Orleans, said assignment being in addition to other collaterals which Graham had previously put into their hands. This assignment was recorded in New Orleans on the 15th of May.

The receiver contends that May had no right to dispose of partnership property for his individual debt. He does not complain of the assignment by Graham because it was made in the interest of the bank, which the firm were bound to protect.

On the 21st of August, 1867, the United States, by its agent,
644 William Bell, assigned all its interest in the lease and partnership property to Alexander Bonneval, Joseph Hernandez, and George Binder. This assignment purported to be of two-thirds of the whole property, and was made for the consideration of $288,000 and the assumption by the assignees of all the liabilities due and owing by May and Graham as lessees and copartners in relation to said railroad, as set out in a schedule annexed to the assignment. This schedule contains various items of indebtedness, amounting to $122,852, some of which were contracted after the assignment by May to the United States; but the debt due the bank was not embraced therein, but was described in the assignment as the sole debt of T. P. May, and the United States not only guaranteed the two-thirds of the property assigned, but guaranteed the assignees against any claim upon it by reason of the said overdraft of $72,000, or the said note of $40,000, or the said assignment from Graham to the Fourth National Bank of New York. Some
645 modification of this assignment was afterwards made by the parties, but nothing material to the question raised by the case before us.

Bonneval and his associates being thus possessed, as they supposed, of two-thirds, and Beauregard still retaining his one-third of said lease and partnership property, on the 15th of October, 1867, they united in an arrangement with the New Orleans and Carrollton Railroad Company, by which the lease was surrendered and all the partnership property was assigned to the company, and in consideration thereof the company issued to them 4,000 shares of stock therein, being equal to the amount of stock retained by the old stockholders (in other words gave them an interest equivalent to one-half of the ownership of the whole property of the company), and assumed and agreed to be responsible for and pay all of the debts and liabilities of the lessees, except those which had been assumed by Bonneval and his associates. An act of the legislature had been obtained to sanction this arrangement and issue of stock on the part of the railroad company.

646 In view of these facts, the receiver contends that if he is not entitled to follow the property itself, and subject it to a trust in favor of the bank on the ground of its being the product of the bank's money, he has, nevertheless, as a creditor of the partnership, a right to have the partnership property applied to the debts of the firm, and charges the defendants, the present railroad company, and Bonneval, Beauregard, and their associates, as intermeddling with and taking possession of the property with full knowledge of the equities with which it is affected.

1. The first ground of relief, namely, that the property belongs to the bank, or is held in trust for the bank, because it was purchased the money of the bank, seems to me clearly untenable. Beauregard and company were engaged in business, and in carrying it on needed funds and became large borrowers of the bank. With the money thus obtained and with other money derived from the proceeds of their business and other sources, they paid expenses, made repairs, bought cars, horses, and other property, and find themselves at the end of the
647 year largely deficit. The bank is their creditor clearly, and perhaps, considering May's peculiar relations, it has cause to make a charge of fraud and official misconduct against him; but how does that entitle the bank to claim the property of the firm as its own? It might as well claim ownership in the property of all its customers because they have procured property by means of their loans from the bank.

Besides, the identity of the property purchased or procured with the money of the bank cannot be ascertained. It was mingled with the other money of the firm, and the whole mass was used indiscriminately for all the purposes of the company. Can the receiver point to a car, a horse, or a lot of ground, and say "this was purchased with the money of the bank"? Other creditors of the firm would have an equal right to claim its property, and nothing but inextricable confusion would ensue if any such claim were allowed to prevail. Creditors they are and nothing but creditors, and with the position of creditors they must be content. They cannot claim their debtor's property as their own.

648 2. As to the other ground on which the bill is founded, namely, that partnership property must first be applied to the payment of partnership debts, and cannot be disposed of by the individual partners for their private purposes or to pay their private debts, the difficulty of the case consists in the fact that the plaintiff has no judgment or execution, and therefore no standing in court. The general proposition on which he bases his claim is very true, and if he were a judgment and execution creditor I should not, as at present advised, have much difficulty in sustaining his claim. A judgment and execution, however, are necessary to give him a claim on the fund, a title to its administration. It is not enough for a person simply to allege that he is a creditor of another to enable him to pursue his debtor's property in a court of justice. He must have some lien on it by way of mortgage, pledge, assignment, judgment, or in some other way, before he can come into court and ask for its sequestration or administration.

649 If a statute subjects a particular class of claims, that fact may be regarded as imposing a trust on the fund, or if the debtor makes an assignment for the benefit of creditors, or if the law makes an assignment for him, as in cases of bankruptcy, in all such cases the creditors for whose benefit, as cestui que trusts, the fund is holden may come into court and ask for its administration in accordance with the trust: but without some such constituted trust or lien a creditor has only the right to pros-

ecute his claim in the ordinary courts of law, and have it first adjudicated before he can pursue the property of his debtor by a direct proceeding.

The reason for this is twofold; first, in order that it may clearly and judicially appear that the claimant is a creditor; and, secondly, that he may have a sufficient title in his hands when he makes application to the court.

The first question to be settled is whether Graham was a partner and had an interest as such in the firm of "G. T. Beauregard, lessee."

He says that he was, and that he contributed by checks $80,000
650 to the partnership accounts, and these are credited in the bank account of the lessee. He says that he also contributed through May some $50,000 more, the particulars of which he cannot specify. On the contrary, May insists that he (May) furnished all the funds, and that Graham's share actually belonged to him. In this contradictory state of the testimony, we must be guided by the papers, and they show that Graham was equally interested with May.

And there are circumstances and other testimony which go to show that this was really the fact of the case. I am satisfied that he must be regarded as a bona fide partner and as having an equal interest with the other parties. This being so, the next question is as to the effect of the assignment made by him to the Fourth National Bank of New York. This assignment was made to secure to that bank the payment of a claim of over $50,000 against the First National Bank of N. Orleans, for which claim Graham was individually responsible. I cannot see that this transaction was in the slightest degree exceptionable. His own
651 obligation was the cause of the assignment, it is true, but that obligation was only collateral to a debt of the N. Orleans bank, to which the firm of G. T. Beauregard, lessee, was largely indebted.

Besides, it was only his interest in the partnership property that he thus assigned. And as that was only what might remain after the partnership debts were paid, he had a perfect right to assign it in payment of or as security for his individual obligations. The Fourth National Bank must be regarded, therefore, as standing in the place and stead of Graham, and as entitled to his interest in the partnership property. It is necessary to inquire whether the power of attorney held by May was broad enough to enable him to assign Graham's property in payment of his own debts, for the assignment by Graham to the bank was prior in point of time, and must be regarded as having the precedence.

The next question is as to the effect of the assignment by May to the United States.

He only assumed to assign his and Graham's interest in the lease
652 and property, real and personal, of the firm. We have seen that Graham's interest had already been assigned to the Fourth National Bank of New York. Therefore, the assignment did not reach that. It could at most reach his own interest. Then what was that interest which he could assign? Could he absolutely assign the title to one-third of all the partnership property, so as to protect it from the partnership debts?

Had all three of the partners joined in an assignment of the entire property of the firm, the purchaser in good faith could undoubtedly have held the property.

And where one partner alone assigns particular articles and items of property to a creditor of the firm in payment of his debt, the creditor (unless prevented by the provisions of the bankrupt law) could hold the property. But where one partner attempts to assign the property of the firm to his individual creditor in payment of or as security for his

own individual debt, the creditor knowing the property to be the property of the firm, the other partners have an equitable right to follow the property and have it applied to the payment of the partnership
653 debts. And this equity of the others partners may be used by the creditors of the partnership to work out a satisfaction of their claims from the property so assigned.

The case is still stronger where, instead of assigning and delivering special articles of property belonging to the partnership, a single partner assigns to his individual creditor all his right, title, and interest in the entire property and assets of the partnership. This does not make the assignee a partner. It does not enable the assignee to seize and possess himself of any portion of the property in severalty. But it gives him a right simply to an account, and to his assignor's share of the surplus after paying the debts of the firm and settling the equities between the partners.

This is all that the United States acquired by the assignment of May. Beauregard and Graham had the right in equity to have the property of the partnership applied to the partnership debts, and through them and their equity the creditors of the partnership had a right to
654 have the property so applied.

This brings us to the question whether the complainant is a creditor of the partnership.

He alleges himself to be such, but the matter is disputed by the defendants. They allege that he is only a creditor of May, that the debt due to the bank is really and truly a debt of May and not a debt of the firm.

This shows how necessary it is to stand by the old rule that a creditor cannot come into court in pursuit of his debtor's property until he presents some title or lien upon it. He must have an assignment from his debtor, or a mortgage or pledge, or judgment and execution, or there must be an assignment to another for his benefit, or in some way he must show a title to the thing itself of which he is in pursuit beyond the mere allegation of indebtedness or the existence of a debt.

I decided—

1. That the money of the bank could not be followed into the things which it was used to purchase and make, because it was mingled with other monies of the firm.

655 2. That the plaintiff could not sustain the bill as a general creditor pursuing the property of his debtor for want of .

656 *Hearing and submission of pleas.—Extract from the minutes. November term*, 1875.

NEW ORLEANS, *Wednesday, March 8th*, 1876.

Court met pursuant to adjournment.

Present, Hon. Wm. B. Woods, circuit judge.

CHAS. CASE, REC'R, *vs.* N. O. & C. R. R. CO. & AL. } No. 7036.

This cause was again resumed on the defendants' pleas. And after hearing further argument the court took time to advise, and allowed complainant one week within which to file brief.

Motion to suppress.—Filed March 9th, 1876.

CHAS. CASE, REC'R,
vs.
G. T. BEAUREGARD ET AL. } No. 7036.

The defendant, the New Orleans and Carrollton Railroad Company by Finney & Miller, its counsel, moves to suppress the manuscript filed in this case as testimony on behalf of the complainant, and purporting to be the reasons assigned by the court for the decree pleaded by
657 the defendant in bar for this suit, this motion to suppress being based upon the ground that no evidence is admissible to explain or affect the decree in question, which speaks for itself; that the reasons form no part of the decree; and on the further ground that such testimony cannot be produced at the hearing, and that the alleged reasons contained in the manuscript differ and are in conflict with the opinion of the court in the suit in which the said decree was pronounced, referred to by Judge Woods in his statement and published in Wood's Reports, vol. 1, p. 125, and this court cannot enter into the examination of the issue as to the reasons of the court to determine the effect of said decree.

Cross-bill of G. T. Beauregard.—Filed March 14th, 1876.

In chancery.

C. CASE, REC'R, ETC.,
vs.
N. O. & CARROLLTON R. R. CO. & ALS. } No. 7036.

To the hon. the judge of the circuit court of the United States for the 5th circuit and the district of Louisiana:

658 Gustave T. Beauregard, a citizen of Louisiana, brings this his cross-bill against the New Orleans & Carrollton Railroad Company of Louisiana, and thereupon your orator complains—

That on or about the 12th day of April, 1866, your orator leased from the New Orleans and Carrollton Railroad Company the railroad belonging to said company, together with the real estate thereunto belonging, the rolling stock thereof, and all the franchises, for and during the term of twenty years, as more fully set forth in the copy of the said lease annexed as a part hereof and marked .

That on or about the 18th day of May, 1866, your orator entered into a contract of partnership with T. P. May and A. C. Graham, as more fully set forth in the copy of said contract annexed as a part hereof and marked A (page 41 of this transcript).

That under said contract of copartnership the said parties conducted and carried on the business for which it was intended; that the said railroad was remodelled, refitted and changed from steam-cars to horse-cars, requiring heavy outlays of money, besides many other ex-
659 penses incurred by the partnership in their said business; that in addition to the foregoing, the partnership, in order the more successfully to carry on the said business, made large purchases of real estate, to wit:

1st. That purchased from Wm. C. Raymond on the 5th of May, 1866, as per Exhibit C, annexed as a part hereof (transcribed on page 47 of this transcript).

2d. That purchased from Samuel A. Kohn on April 30th, 1866, as per Exhibit D, annexed as a part hereof (page 54 of this transcript).

3d. That purchased from the said New Orleans and Carrollton R. R. Company on the 29th June, 1866, as per Exhibit E, annexed as a part hereof (page 60).

4th. That purchased from the said company on the 15th January, 1867, as per Exhibit F, annexed as a part hereof (page 67 of this transcript).

5th. In addition to the above property, purchased with the funds of said partnership, the said firm, by their lease from said company, were entitled for the full term of their lease to the use of the square of ground situated corner of Napoleon avenue and St. Charles street, on which they made and erected extensive and valuable improvements.

660 That for the purchase of said lease and property, and for the payment of the said expenses, the partnership aforesaid procured moneys from and became indebted unto the First National Bank of New Orleans in the sum of two hundred and thirty-seven thousand and eight dollars and eighty nine cents ($237,008.89), with interest from the 13th day of May, 1867; that Charles Case, receiver of said First National Bank, brought suit against your orator and his partners on the law side of this hon. court for the recovery of the said sum due to the said bank; that the said A. C. Graham, being absent from and a non-resident of the State of Louisiana, was not served with process, so that judgment could not be obtained against him personally, but that on the 26th of February, 1873, by the judgment of said court, the said First National Bank recovered severally against your orator and the said T. P. May each the sum of seventy-nine thousand & two dollars & sixty cents ($79,002.60), their several virile shares as ordinary partners of said debt, with five per cent. interest per annum from 13th of May, 1867, and costs

661 of suit; all of which will more fully appear by reference to the said suit, numbered 6488 upon the docket of this court.

That upon a writ of error directed from the United States Supreme Court to the said circuit court in the aforesaid proceedings, a final judgment was rendered in favor of said First National Bank and against your orator, during the October term, 1875, of said Supreme Court, affirming the said judgment of the circuit court, as will more fully appear by Exhibit X, the decision and decree of said Supreme Court, annexed as a part hereof.

Your orator further alleges that Alexander Bonneval, George Binder, and Joseph Hernandez, ayans-cause by mesne conveyance of the said A. C. Graham and of T. P. May, together with your orator, on or about the 16th October, 1867, entered into an agreement with the said New Orleans and Carrollton Railroad Company, by which the aforesaid lease and all the property belonging to the said partnership of May, Graham, and your orator, were surrendered to the said railroad company.

662 This was done in consideration of the said company assuming to pay your orator's share in all the debts and liabilities of the said lessees or stockholders of partnership of your orator, May, and Graham, and also giving four thousand shares of one hundred dollars each of the capital stock of said company to your orator and the said Bonneval, Binder, and Hernandez; one-third ($\frac{1}{3}$) thereof to your orator, and the remaining two-thirds ($\frac{2}{3}$) to said Bonneval, Binder, and Hernandez; all of which will more fully appear by the copy of the act passed before Selim Magner, a notary public, on the 15th day of October, 1867, which is annexed as a part hereof, and marked Exhibit L (page 119 of this transcript).

That said act of transfer, known as the fusion act, stipulates expressly that "In further consideration of the foregoing fusion and delivery of

property, the New Orleans and Carrollton Railroad Company does hereby assume and bind itself to pay and be responsible for all the debts and liabilities of said Carrollton Railroad, and of said parties of the second part (including your orator), so far as their liabilities
663 for said road are concerned, by reason of all which said New Orleans and Carrollton Railroad Company, having by these presents consolidated their interest with that of the said parties of the second part of the said railroad company, as one corporate body, becomes and is liable for all debts due by said company and by said parties of the second part, except, however, the indebtedness of said Binder, Hernandez, and Bonneval, under their said act of purchase of 21st August, 1867, of which further mention is hereafter made."

That among the debts and liabilities thus assumed by the said New Orleans and Carrollton Railroad Company in said act of fusion is included the said debt of seventy-nine thousand and two dollars & sixty cents ($79,002.60), besides interest, for which judgment has been rendered against your orator in this hon'ble court, on the law side, which judgment, as above recited, has been affirmed by the Supreme Court of the United States on error.

That your orator has faithfully and punctually complied with
664 *with* all his obligations under the said fusion act; and in equity is entitled to recourse for indemnity against the said New Orleans and Carrollton Railroad Company in the premises; and that in discharge of the aforesaid judgment rendered against your orator, the said New Orleans and Carrollton Railroad Company is bound in law and in good conscience to pay the amount due by your orator as a member of the aforesaid partnership of your orator, May and Graham, to the said First National Bank. That said company was advised of the pendency of said suit on the law side of this court and took an active part, though not a party of record, in the defence of that case, and said judgment against your orator is binding on the said New Orleans and Carrollton Railroad Company.

That your orator does not refuse, but is unable to pay the aforesaid judgment.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises, according to the strictness of rules of the common law, and can have adequate relief only in equity.

665 To the end, therefore, that the said defendant the New Orleans and Carrollton Railroad Company may be ordered to do what is just and proper in the premises, and the necessary decrees therefor be obtained, and that said New Orleans and Carrollton Railroad Company be decreed to pay to your orator and to the receiver of the First National Bank of New Orleans the amount of said judgment, to wit, the sum of seventy-nine thousand and two dollars & sixty cents ($79,002.60), with legal interest from the 13th day of May, 1867, and costs to be taxed, and that your orator may have such other and further relief in the premises as the nature of the case requires.

He therefore prays for the issuance of the writ of subpœna of the United States, to be directed to the said New Orleans & Carrollton Railroad Company, commanding them at a certain day and under a certain penalty to be and appear before your honors, in this hon. court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your hon-
666 ors shall seem meet, and that your orator may have such other

and further relief as shall seem agreeable to equity and good conscience, and your orator shall ever pray, etc.

(Signed) A. & W. VOORHIES,
Solicitors.

G. T. Beauregard, being duly sworn, says he is the complainant in the foregoing bill of complaint; that all the facts and statements therein contained as of his own knowledge are true, and that as to such matters as are therein stated on information and belief he believes to be true.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed before me this 13th day of March, 1876.

(Signed) F. B. VINOT,
U. S. Comm'r.

Order.

Let this cross-bill be filed.
March 14th, 1876.

(Signed) W. B. WOODS, *Judge.*

Subpœna in chancery on the cross-bill to the New Orleans and Carrollton Railroad Company—Issued March 14th, 1876.

667 UNITED STATES OF AMERICA:

The President of the United States to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon the New Orleans & Carrollton Railroad Company to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of April, 1876, then and there to answer a cross-bill in chancery filed against them, wherein Gustave T. Beauregard, a citizen of the State of Louisiana, is complainant, and said New Orleans and Carrollton Railroad Company defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 14th day of March, in the year of our Lord one thousand eight hundred and seventy-six, and the 100th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Dy Clerk.

668 The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of April, 1876, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Dy Clerk.

Marshal's return.

Received, Mar. 14, 1875, by the U. S. marshal, and on the 16th day of March, 1876, served a copy hereof on the New Orleans and Carrollton

Railroad Company, by handing the same to W. Van Benthuysen, the president of said company, in person, in this city.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REID,
D'y Marshal.

Entry at April rules, 1876.—*Extract from chancery order-book, Monday April 3rd,* 1877.

CHARLES CASE, REC'R, &C.,
vs.
N. O. & CARROLLTON R. R. Co. } No. 7036.

669 The New Orleans and Carrollton Railroad Company, defendants, have this day, by their solicitor, L. E. Simonds, entered their appearance to the cross-bill of G. T. Beauregard.

Decree.—Entered and filed May 26th, 1876.

U. S. circuit court, district of Louisiana.

CHARLES CASE, RECEIVER OF THE FIRST National Bank of New Orleans, Frank F. Case substituted,
vs.
THE NEW ORLEANS & CARROLLTON Railroad Company & others. } No. 7036.

This case came on to be heard on the bill, pleas of defendants, replication, proofs, and exhibits in the cause, and was argued by counsel.

On consideration whereof the court is of the opinion and finds that said pleas are sustained and established by the evidence.

It is therefore ordered, adjudged, and decreed that the bill of complainant be dismissed at his costs.

May 26th, 1876.

(Signed) W. B. WOODS, *Judge.*

670 *Petition for Appeal.—Filed June 25th,* 1877.

U. S. circuit court, district of Louisiana. In equity.

CHARLES CASE, F. F. CASE SUBSTITUTED, RECEIVER of 1st National Bank of N. O.,
vs.
NEW ORLEANS & CARROLLTON RAILROAD Company et al. } No. 7036.

To the honorable the Supreme Court of the United States:

The appeal of Frank F. Case, receiver of the First National Bank of New Orleans, respectfully showeth:

That heretofore Charles Case, receiver of the First National Bank of New Orleans, filed his bill in said circuit court against the defendants, the New Orleans & Carrollton Railroad Company, G. T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander Bonneval, George Binder, and the Fourth National Bank of New

York, and the defendants, the New Orleans and Carrollton Railroad Company, Alexander Bonneval, George Binder, & Joseph Hernandez, appeared and filed their plea to said bill, to which plea replication
671 was filed, and proofs taken and filed in the record. And the said Charles Case having resigned his office of receiver aforesaid, Frank F. Case was appointed receiver in his stead, and by supplemental bill became party complainant in said suit.

That afterwards, upon the 26th day of May, 1876, a final decree was made and pronounced in said cause, whereby it was ordered, adjudged, and decreed that said plea of said defendants was "sustained by the evidence," and that said complainant's bill be dismissed, and it was dismissed accordingly.

Wherefore the said complainant appeals from the whole of said decree of said circuit court, and respectfully prays that the decree of said circuit court, and the bill, pleas, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that said Supreme Court will proceed to hear said cause anew; and that said decree of the circuit court and every part thereof may be reversed, and a new decree made in conformity
672 with the prayer of said bill, and granting the relief asked by complainant with costs, or such other decree as to said Supreme Court shall seem just.

(Signed) ROUSE & GRANT,
Solicitors for Appellant.

Order.

An appeal is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the U. S. the 2d Monday of October, 1877. the appellant giving bond and security in the sum of $500.

June 25th, 1877.

(Signed) W. B. WOODS, *Judge.*

Bond for appeal.—Filed June 25th, 1877.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Frank F. Case, receiver of the First National Bank of New Orleans, as principal, and William Grant, as surety, are held and firmly bound, jointly and severally, unto the New Orleans and Carrollton Railroad Company, Joseph Her-
673 nandez, Alexander Bonneval, and George Binder, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said New Orleans and Carrollton Railroad Company, Joseph Hernandez, Alexander Bonneval, and George Binder, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated the 25th day of June, in the year of our Lord eighteen hundred and seventy-seven.

Whereas the above-named Frank F. Case, receiver of the First National of New Orleans, hath taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered by the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of said Case, receiver as aforesaid, against said New Orleans and Carroll-

ton Railroad Company, Joseph Hernandez, George Binder, Alex-
674 ander Bonneval, & others, No. 7036, of the docket of said court.

Now, the condition of the above obligation is that if the above-bounden Frank F. Case, receiver of the First National Bank of New Orleans, shall prosecute his appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

(Signed) FRANK F. CASE, [L. S.]
Receiver of First National Bank of N. O.

(Do.) WILLIAM GRANT. [L. S.]

Approved.

(Signed) W. B. WOODS, *Judge.*

675 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 674 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Charles Case, F. F. Case substituted, receiver of the First National Bank of New Orleans, versus The New Orleans and Carrollton Railroad Com'y et als., No. 7036 of the docket of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 13th day of September, A. D. 1877. Twelve words erased before signing.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 13th day of September, A. D. 1877.

W. B. WOODS, *Judge.*

676 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the New Orleans & Carrollton Railroad Company, Alexander Bonneval, Joseph Hernandez, and George Binder, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & an order for appeal filed in the clerk's office of the circuit

court of the United States for the fifth circuit and district of Louisiana, wherein Frank F. Case, receiver of the First National Bank of New Orleans, is complainant and appellant, and you and each of you are defendants and appellees, to show cause, if any there be, why the judgment against the said Frank F. Case, receiver, &c., as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

W. B. WOODS, *Judge.*

678 (Indorsed:) N. O. & Carrollton R. R. Co. & others. United States circuit court. No. 7036. Chas. Case, F. F. Case substituted, receiver, &c., vs. New Orleans & Carrollton R. R. Company et als. Citation.

On the 27 day of Aug., 1877, personally appeared before me the subscriber, Dan. A. Rose, a deputy marshal, and makes oath that he served copies of the within citation, as stated in his official return hereon.

DAN. A. ROSE,
D'y U. S. Marshal.

Sworn to and subscribed before me this 27 day of August, 1877.

F. B. VINOT,
U. S. Comm'r.

Received Jun' 27, 1877, by the U. S. marshal, and on the same day, June 27, 1877, served a copy of the within on the N. O. C. R. R. Co. by handing the same to W. V. Crouch, the sect., in person, in this city; on the same day served a copy of within on J. Hernandez & Geo. Binder by handing the same to them in person in this city.

DAN. A. ROSE,
D'y U. S. Marshal.

On the 9th day of July, 1877, served a copy of the within on Alexander Bonneval by handing the same to Chas. Gainne at his (Bonneval's) residence, No. 57½ Esplanade st., in the city of New Orleans, he being absent at the time of service.

W. G. ELLIOTT,
Deputy Marshal.

On this 10th day of of July, 1877, personally appeared before me, the subscriber, W. G. Elliott, a deputy marshal, and makes oath that he served a copy of the within citation as stated in his official return hereon.

W. G. ELLIOTT,
D'y Marshal.

Sworn to and subscribed before me this 10th day of July, 1877.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 191. Frank F. Case, receiver of the First National Bank of New Orleans, appellant, vs. The New Orleans and Carrolton Railroad Company, A. Bonneval, Jos. Hernandez & George Binder. Louisiana C. C. U. S. Filed 27 September, 1877.

OFFICE SUPREME COURT U.S.
FILED
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D. W. MIDDLETON, CLERK.

Supreme Court of the United States

OCTOBER TERM, 1879.

No. 191.

FRANK F. CASE, Receiver of the First National Bank of New Orleans, Appellant,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY, GUSTAVE T. BEAUREGARD, T. P. MAY, A. BONNEVAL, and others.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Statement of Facts, Errors Assigned, and Argument in Brief for Appellant.

CHARLES CASE,
Of Counsel for Appellant.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1879.—No. 191.

FRANK F. CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS, APPELLANT,

vs.

THE NEW ORLEANS AND CARROLLTON RAIL-ROAD CO., GUSTAVE T. BEAUREGARD, T. P. MAY, A. BONNEVAL, AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Statement of Facts, Errors Assigned, and Argument in Brief for Appellant.

I. PRELIMINARY.

To insure proper consideration of the present case, it becomes necessary to refer to certain cases already adjudicated and recall some of the leading features of their history. Such being the unusual situation, we hope to be pardoned two or three suggestions preliminary to a special abstract of the present record.

First. The court will discover in the claim sought to be recovered in this suit a very familiar acquaintance. It is

the old claim of the creditors of the First National Bank of New Orleans against the copartnership of May, Beauregard & Graham, the principal of which was and is over $237,000, and which, with interest at five per cent. added, now amounts to over one-third of one million of dollars! It was before this court first, on the law side, at the October Term, 1875, on a writ of error originally sued out by defendant G. T. Beauregard, in which May afterwards joined. Beauregard has from the first sought to evade all personal liability for any part of this claim, and hoped to do so in this law case, it would seem, because, as between the copartners, the agreement was that May and Graham were to provide the funds, and because by his acts May had beyond question made himself liable for the entire debt. Beauregard also denied that there was, or had been technically, any partnership. But this court (91 U. S., 134) held that there had been a valid partnership, and that the claim was a legal liability of said firm, (each partner being bound for his virile share,) even though May might have made himself responsible for the entire debt.

It may be remarked, in passing, that said copartnership agreement had before this come to the notice of this court, in *Bank* v. *Carrollton Railroad Co.*, 11 Wall., 624, December Term, 1870.

Said claim came again before this court in No. 167 of last term, which was a chancery case, originally commenced and decided in the court below before said suit at law was instituted. (See Record, p. 255.) In fact, as will hereafter appear, said suit at law was brought because of the ruling of the court below in said first chancery case, which latter will hereafter be designated in this brief as said suit No. 167.

The decision of this court at last term, in said suit No. 167, was adverse to the creditors of said bank, and a petition for rehearing was denied. Once more the same claim beseeches favorable consideration. The parties are the

same as in said No. 167, and the suit is in equity; but this time the respondents defy us with the plea of *res judicata*,—a plea known by that technical name in the practice of Louisiana. This plea was predicated and sustained by the court below upon the decision of said lower court in said No. 167; but now the respondents assume that their position is rendered impregnable because of the said ruling of this court in the same cause. We claim—and hope to be able to demonstrate—a material and conclusive difference between the bill in the present suit and the one heretofore adjudged insufficient.

Second. At this point, we recognize that this court may most pertinently ask: "Why are we to be troubled with this claim again? Have we not already set it at rest?" And so we beg to say, in advance, that, with the profoundest respect for this tribunal and its solemn judgments, we present this matter once more, because we have the most unwavering confidence—a confidence unshaken by the shadow of a single doubt—that if the facts of this case were here for the first time brought to the consideration of the honorable justices, in such manner as, *under the present bill*, we hope to be able to present them, and untrammelled by any adverse influences growing out of the past, our success would be as certain as though we were simply asking, in a court of law, that a maker should be held responsible upon his own promissory note!

We do not fail to comprehend the odds against us. They can scarcely be over-stated; while to their discouraging influence may be added the defiant indifference, or assurance, of our adversaries. In brief, the situation may be thus stated. We call upon the respondents to make reparation to the creditors of the bank for their money used in the purchase, repairing, stocking, and operating of said railroad, and the property appurtenant. We charge that re-

spondents took said property with full knowledge that they were reaping, without compensation, the benefit of this money, &c. In substance, their response is: "Yes, we know that this railroad and appurtenant property, now the property of our corporation, had the benefit of $237,000 of the moneys of your bank depositors. We bought with actual notice as to $112,000 of this indebtedness, and with ample constructive notice as to the residue."

We know, too,—knew when we made our act of fusion,—that the lease of said railroad for the term of twenty-five years, together with its rolling-stock, mule and other motive power, its improvements and property attached, to the value of hundreds of thousands of dollars, were once the assets of the said copartnership that owed said debt,—yes, we knew even that much of the value of said property was the direct fruit of the use of said money by said firm! "Indeed, one of our number was one of the members of said copartnership, and while we agreed and arranged with him to pay every other liability of said partners, and have so done, we deliberately arranged and combined with him *that this debt should not be paid;* that with him we would enjoy the fruits of the money thus obtained, leaving your bank creditors to pocket the loss. Now, we have only to add that the U. S. Circuit Court declared this to be EQUITY; and to this ruling below the tribunal of last resort has now added its irrevocable AMEN!"

It remains to be seen whether they have not mistaken the scope and tenor of both decisions. For one, the writer will only believe, when he must, that so huge a wrong can, in the name of equity, be crystallized into a *remediless, an eternal injustice!*

We hope not to be too severely censured for these preliminary words, so apparently in disregard of the rule of court.

II.

Statement of Facts.

In our abstract of facts we shall follow, to some extent, but with some more particularity, the statement submitted in said No. 167, with such further additions as will show the difference between the present and the former suit.

1st. On the 12th of April, 1866, G. T. Beauregard leased from the New Orleans and Carrollton Railroad Company its railroad track and appurtenances for the term of twenty-five years from April 16, 1866. In addition to the track, said lease covered the rolling-stock and engines, and certain grounds and buildings belonging to said company, and gave to the lessee the right to sell said engines and convert said railroad into a road to be worked by horse power. The value of the lease thus obtained may be in part estimated from the annual rental, and annually increasing rental reserved, which was $20,000 for the first year, with an additional sum of $500 for each year, so that the rent of the last year would amount to $32,000; and all these rents were payable monthly at the end of each month. Said lease also covered other property, for which an additional rent was to be paid. (See *Exhibit* "*A*," Record, p. 9.)

2d. This lease, though in the name of Beauregard only, was taken for the benefit of a copartnership consisting of said Beauregard, Thomas P. May, and A. C. Graham, which was formed by an act of copartnership entered into in writing on the 18th of April, 1866, for the purpose of operating said railroad under said lease. And although by the terms of said lease it was not assignable, yet, when we take into account the well-known circumstances of said Beauregard pecuniarily, and the fact that said May and Graham were sureties for said Beauregard upon said lease, it is safe to

state that said railroad company knew that said lease was procured for the benefit of said then-contemplated copartnership. By the terms of this act of copartnership, said Beauregard was to manage and conduct the business of said firm at a salary of $5,000 per annum, with the right also, after the repayment of capital and interest, to share equally in the profits of the enterprise. Said May and Graham were equally to advance such moneys as might be required for the partnership business, upon which advances they were to be allowed eight per centum interest. (For the full terms of this copartnership, see *Exhibit* "*B*," *Record, p.* 12.)

Here, lest it may be claimed again that said Graham was the mere "figure-head" and "tool" of said May in said transactions, it may be stated that the testimony of *Helm* (Record, pp. 216, 217) and of *Meig* (Record, pp. 228, 229) shows conclusively that Graham did put into said copartnership at least $60,000 of his own funds. (See also Graham's own testimony, Record, p. 246.)

At the date of this copartnership said Graham was president of said First National Bank, but during the summer of that year he left said city of New Orleans for New York, where he subsequently resided. On the 6th of October, 1866, said Graham resigned the presidency of said bank, and said T. P. May was thereupon elected his successor. At the same time said Graham was duly constituted agent of said bank for said city of New York. (See Record, pp. 227, 238.) D. B. Forbes succeeded said May as president about three or four weeks before the bank suspended. (Record, p. 224.)

3d. An account was opened by said copartnership with said First National Bank, in the name of "Beauregard, lessee," and large sums of money obtained therefrom by overdrafts upon said bank. A small proportion of said money was used by said copartnership for the operation of said railroad, but the principal sums thus obtained were

expended in the repair, restocking, and reëquipment of said road and the purchase of real estate and other property for said firm.

For evidence of some of the real estate purchased, see *Exhibits* "C," "D," "E," and "F," Record, pp. 14, 16, 18, and 20. Comparing the sums named in these several exhibits with the statement of liabilities, (Record, p. 29,) the inference is clear that most of the money obtained from the bank went into the railroad and its equipments.

Said bank failed May 13, 1867, and at the time of its failure said partnership was indebted thereto in the sum of $237,008.89, obtained by such overdrafts and expended as aforesaid, although the overdrafts had been apparently reduced to $72,008.89 by two fictitious credits—one of $40,000 by the note of G. T. Beauregard, lessee, (still held by the bank and unpaid,) and one of $125,000 by a draft drawn by May upon Graham, and by May's direction credited in said account to conceal the overdraft from the bank examiner; said draft then being, as it hath always been, worthless. A copy of said note of $40,000 is found on Record, p. 82, and on the following page is a copy of said draft for $125,000. The testimony of *Louis Meig* (Record, pp. 224, 225) shows how the note and draft were received and used by the bank, proving the charges of the bill.

4th. May being indebted to the United States for more than one million of dollars, on May 14 he assigned his property to said United States, "*in part payment of said indebtedness*," in which assignment was included "the interest of the said May in and to the Carrollton Railroad Company and the property, stock, and appurtenances thereunto belonging." (Exhibit "N," R., pp. 44–56.) Again, on May 16 he made a more formal transfer to the United States of said interest, wherein he describes it as being one-third part and interest in the lease, franchises, and property of said railroad, acquired by Beauregard for joint account of himself, May, and Graham. (Exhibit "H," p. 23.) In the last act, May

professes to transfer Graham's share also, under a power of attorney and as his agent, although he declares that he was himself the owner of that interest as well. But Graham had himself, on the 8th of May, assigned his interest in said partnership to the Fourth National Bank of New York. (Exhibit "M," pp. 43, 44.)

Whether May, with only an ordinary power of attorney from Graham, drawn in the form in daily use in the city of New Orleans, to corroborate his assertion of ownership of Graham's interest in said copartnership, lease, and property, appears in this record in such superior light as to credibility, that what he says must outweigh the positive statement of Graham and the confirmatory statements of *Helm* and *Meig*, already cited, need hardly be discussed. It may be noted, in passing, that the estimated value put upon two-thirds interest in this partnership property was $480,000, or $720,000 for the entire interest. It does not appear that the agent of the United States objected to this estimate.

5th. Under the supposition that the United States had acquired a two-thirds interest in the lease of the railroad and the real estate and other property of the partnership aforesaid, William Bell, described as a special agent of the United States, on the 21st of August, 1867, as such special agent, made a pretended conveyance of said supposed interest to the defendants Bonneval, Binder, and Hernandez. (Exhibit "I," p. 25.) The act of Bell not being approved by the Secretary of the Treasury, Edward Jordan, Solicitor of the Treasury, with the approval of the Secretary thereof, made, on the 31st day of October, 1867, another conveyance of said supposed interest of the United States to the parties last aforesaid. (Exhibit "J," pp. 30–32; Exhibit "K," p. 33.) In each of these acts, the *real estate* purchased by the partnership is described, and the supposed interest of the United States therein sold. The sale was *not made at*

public auction, nor after three months' advertisement, as required by law.

The distinction between these two acts of sale ("I" and "J") may be noted here, and will be more critically noticed in the argument. In the first act, executed at New Orleans, the agent of the United States positively agreed and promised that the government would assume and pay said liability of said copartnership to said First National Bank, so far as the amount was then positively known; (Record, p. 27, near bottom of the page;) while in the last act, got up and consummated at Washington, under the supervision and in the name of the Solicitor of the Treasury, there was only a promise that the United States would save the purchasers harmless from all liability on account of said bank claim.

The statute of the United States prescribing how such sales shall be made, is section 3749 of the Revised Statutes, p. 774. Its effect will hereafter be considered.

6th. On October 15, 1867, Bonneval, Binder, and Hernandez joined Beauregard in an agreement with the New Orleans and Carrollton Railroad Company, whereby they surrendered to the latter all interest they had in the lease of the road and property of the partnership; and said company entered into possession of said property, and continued in such possession at the time this suit was brought.

This agreement is known as the "*Act of Fusion*," (Record, pp. 36–43,) and in said act *said company assumed all the liabilities of the said lessee, and has since discharged all of them, except said debt due to said bank, it being at the time the bill was filed the sole creditor of said partnership.*

Thus the New Orleans and Carrollton Railroad Company became possessed of all the assets of said partnership, and still retains the same. Each of said partners was at the time of the several conveyances aforesaid, and ever since then hath been, insolvent. These facts were known to said railroad company at the time it took possession of said

property, and so was the fact of the debt of the partnership to said bank, and so were these facts known to each defendant at the time he dealt with said property as above stated, and their acts in the premises operated as a fraud upon said bank.

7th. Said First National Bank having failed, the said agent of the United States, to whom the said May made said transfer, as set forth in Exhibits "N" and "H," to wit, Honorable John Jay Knox, on the 13th day of May, 1867, took possession of said bank, and continued to control the same for some two weeks thereafter, (Record, p. 231, testimony of Meig,) when Charles Case, having been duly appointed receiver, assumed charge of the affairs of said bank, and brought this bill, as well as the aforesaid suit No. 167 and said suit at law. Subsequently said Charles Case resigned, and the present complainant succeeded him, all of which appears of record.

8th. When the cause No. 167 was heard and decided by the court below, no judgment at law had been obtained in behalf of said receiver upon said claim against said copartners, Beauregard, May & Graham, nor either of them; (see opinion of Mr. Justice Bradley as then delivered, Record, on page 259, the second point there made beginning at the figures of margin 648; also page 261, following the figures 654;) nor had any suit at law then been instituted. But it is averred by the bill, (Record, p. 3 and following,) and the record elsewhere shows that such a suit was thereupon instituted, and that at the next term of said Circuit Court, to wit, on the 26th day of February, 1873, said receiver recovered a judgment in said suit against said Beauregard and said May, each for his virile share, to wit, one-third of the amount of said claim. Said Graham was a non-resident, and as to him there was a return of "*not found.*" As he did not voluntarily appear, no judgment

could be entered in said cause against him, but said judgment established the amount of his liability sufficiently for the purposes of this proceeding in chancery. (Record, pp. 3, 4.)

Said judgment at law still remains unsatisfied, in full force, and, as already appears, has since been affirmed by this court.

Said Graham and all said copartners were then and still are entirely insolvent.

9th. On the 10th day of May, 1873, writs of *fieri facias* were duly issued upon said judgment at law, duly commanding the proper United States marshal to make the said amounts so as aforesaid recovered against said Beauregard and May, and upon said writs said marshal duly returned that no property could be found upon which to levy either of them, and that no part of said sums so recovered had been or could be made under said writs. (Record, p. 4.) Here it may be stated, in passing, that said Beauregard did not sue out said writ of error to this court until after the return of said writs of *fieri facias* "*nulla bona*," nor until after the present bill was filed.

10th. The bill avers that all the aforesaid transfers of said partnership property, interests, and effects were made with full, ample notice on the part of all said transferees and parties defendants of all and singular the rights and claims of said bank as a creditor of said partnership as aforesaid, and that all of said transfers were and are illegal and void, as against said bank, as being in violation of its rights, preferences, and privileges as such copartnership creditor. Said bill asserts the right of said bank to be paid by preference from said partnership assets, and the consequent right to hold respondents accountable therefor to the extent of said assets, or of their value. (Record, pp. 5, 7.)

11th. Said bill also charges that said transfers were and are void for fraud, as against said bank, the legal intent and effect thereof being to hinder, delay, and defeat said bank in the attempted collection of its said claim. (Record, p. 7.) Even *this allegation stands uncontroverted and confessed by the issue in this cause made.*

12th. As already stated, the bill avers (Record, pp. 7, 8) that by the true construction of said act of fusion said railroad company agreed to assume and pay all the debts of said copartnership; that they have thus paid all save said indebtedness to said bank, and that said bank was, when said bill was filed, the sole unsatisfied creditor of said copartnership. And here we cannot but note that while Beauregard, in his answer in said suit No. 167, (Record, pp. 128–137,) denied this averment either as a fact or conclusion of law, the said judgment of this court in said suit at law, or some other influence, has changed his conviction, and we find in the last pages of the present record a "*cross-bill*" filed by him, (Record, p. 262,) in which he sets up this liability of said company, *and asks that it be enforced, but only for his protection!*

All the foregoing statements are, as has been shown, apparent of record, or stand as uncontroverted averments of the present bill, *confessed by the issue tendered.*

13th. The decision of the court below in said cause No. 167 was against the complainant. Said court dismissed the bill then pending upon the ground—as we say, solely upon the ground—that complainant had not then exhausted his remedy at law; had not obtained a judgment at law upon said claim, or any part thereof, nor had there been any return of *nulla bona* upon execution. That this was the ground upon which said suit No. 167 was dismissed by the court below, we think is obvious beyond dispute from the language of the judge in his written opinion then delivered,

and which is found in this record, pages 256–261; particularly from what there appears on pages 259 and 261, as before cited.

As to this point, the oral language of the honorable judge, as then used, and as set forth in the testimony of Messrs. King, De Gray, Rouse, the clerk of said court, and the writer, found in the record, pages 63 to 67, would seem to be conclusive. It will be commented upon in the argument.

14th. Such having been the decision in said first chancery suit, (No. 167,) said receiver forthwith proceeded to obtain his judgment, or judgments at law, the issuing of writs of *fieri facias* thereon, and the return of such writs "*nulla bona*," as already set forth; and thereupon, on the 2d day of August, 1873, he filed the bill in the case at bar. Said bill prayed a decree establishing said debt against said copartners, that said partnership interests and property might be decreed liable for the satisfaction thereof, or that respondents might be adjudged liable to pay said indebtedness, or to account for the value of said interests and property in satisfaction of the same, and that complainant might have all further or other relief consistent with equity, &c. To this bill the respondents pleaded *res judicata*, respondent Beauregard pleading separately, and the other respondents jointly. (Record, pp. 52–60.)

Thus the respondents, conceding the truth of every averment of the present bill, planted themselves for defense upon the sole proposition that the decision of said Circuit Court in said original case, (No. 167,) was a perfect, complete bar to all relief sought by complainant in this cause!

On the 26th day of May, 1876, said Circuit Court, after hearing and argument, sustained said pleas and dismissed complainant's bill. (Record, p. 266.)

From that decision and decree this appeal is taken.

Upon the facts of record as above stated, we predicate the following:

III.

Assignment of Errors.

First. The said Circuit Court erred in sustaining the said pleas of said respondents to said complainant's bill, and in deciding that said pleas constituted a defense and bar to complainant's suit.

Second. Said Circuit Court erred in decreeing the dismissal of complainant's said bill.

Third. The said Circuit Court erred in not overruling said pleas and sustaining complainant's bill, and in not decreeing the relief as prayed for by said bill.

IV.

Argument.

If the foregoing statement is in some respects tediously full, in others apparently argumentative, the apology is that, if possible, we design to avoid all oral discussion of this cause. Therefore we have sought to set forth, as we understand them, all facts that can in any aspect of the case become material.

As to the case as stated, that it discloses at least technical error, seems to us too clear for argument. But as we should not now feel justified in troubling the court with this cause upon technical errors alone, and as we would at the outset satisfy honorable judges that we are not intentionally trifling with their time, we will here and now state what may be termed the leading proposition which, beyond and above all technicalities, as we view it, is involved, and which, after disposing of some preliminary and minor points, we intend to press and *demonstrate* as decisive of the merits of this case. It may be stated thus:

(*Note A.*) We do not shut our eyes to the conflict between this proposition and the language of this court, as expressed by Mr. Justice Strong, in the opinion in No. 167. The learned judge expressed the conviction, that, substantially, the common law and the Louisiana code were in harmony as to the rights of creditors of a partnership. Our proposition, if correct, shows that they are "wide as the poles apart." We confess to the almost overpowering embarrassment resulting from the ground which we now feel that truth compels us to assume; and this embarrassment is only greater because the wide, all-important difference between the two systems was not demonstrated, as it might have been, when No. 167 was argued. For *himself alone*, the writer submits a two-fold excuse: first, he confesses that he was not then aware of the decisive advantages secured by the Louisiana code; and secondly, he was at all times fearful of defeat in that case because of the defective bill.

After all, the conflict is one of fact. We do not ask this court to consider whether it may not have wrongly ruled upon a question of general law, (though any tribunal that would refuse to look at such a request, when *properly* and respectfully presented, would scarcely merit the name of a court of *justice*,) but we do urge a re-examination of the question of fact, viz., What was, and is, the law of Louisiana as to the rights of the parties? Even this we ask only because confident, *past all doubt*, that we can demonstrate the fact to be as we assert. Thus confident, we do beg for the most searching examination of the authorities, and the more searching it is the more confident shall we be of a finding in our favor.

Leading Proposition.

The civil code of Louisiana secures to the creditor of a partnership a specific preference and privilege upon and against the property of such partnership, by virtue of which such indebtedness *must* be satisfied from such partnership property, to the exclusion of the claims of all creditors of individual members of such firm. This preference or privilege may *properly* (not *loosely*) be called a lien; and so effectual is it that not even a judicial sale of the interest of one partner, made to satisfy his personal debt, will impair its operation. It is so far-reaching that it is not destroyed by a sale for a fair price and with honest intent made to a third person who purchases with notice that he is buying the property of an indebted partnership; but, notwithstanding such sale, the partnership creditor may still pursue such partnership property, if it can be reached in kind, and if it cannot be so reached, *he may compel such purchaser to pay him the value of the property so purchased in satisfaction of his claim.* All this is insured to the partner
without the assent or co-operation of ar
such creditor *may demand in his own na*

At this point, if the court may be pr
"Why was not the above proposition more distinctly urged and demonstrated, if that may be done, when the cause No. 167 was orally argued?" it enables the writer to explain that, so far as he is interrogated, he can but confess that not until the petition for a rehearing in that case was being prepared was he made fully aware how essentially the Louisiana Code enlarged and insured the rights of creditors of a copartnership; while as to the counsel who instituted and mainly conducted that suit in both courts, the fact may be that he was so sanguine of success upon common law and general equity principles, that he did not

(*Note A.*) We do not shut our eyes to the conflict between this proposition and the language of this court, as expressed by Mr. Justice Strong, in the opinion in No. 167. The learned judge expressed the conviction, that, substantially, the common law and the Louisiana code were in harmony as to the rights of creditors of a partnership. Our proposition, if correct, shows that they are "wide as the poles apart." We confess to the almost overpowering embarrassment resulting from the ground which we now feel that truth compels us to assume; and this embarrassment is only greater because the wide, all-important difference between the two systems was not demonstrated, as it might have been, when No. 167 was argued. For *himself alone*, the writer submits a two-fold excuse: first, he confesses that he was not then aware of the decisive advantages secured by the Louisiana code; and secondly, he was at all times fearful of defeat in that case because of the defective bill.

After all, the conflict is one of fact. We do not ask this court to consider whether it may not have wrongly ruled upon a question of general law, (though any tribunal that would refuse to look at such a request, when *properly* and respectfully presented, would scarcely merit the name of a court of *justice*,) but we do urge a re-examination of the question of fact, viz., What was, and is, the law of Louisiana as to the rights of the parties? Even this we ask only because confident, *past all doubt*, that we can demonstrate the fact to be as we assert. Thus confident, we do beg for the most searching examination of the authorities, and the more searching it is the more confident shall we be of a finding in our favor.

Leading Proposition.

The civil code of Louisiana secures to the creditor of a partnership a specific preference and privilege upon and against the property of such partnership, by virtue of which such indebtedness *must* be satisfied from such partnership property, to the exclusion of the claims of all creditors of individual members of such firm. This preference or privilege may *properly* (not *loosely*) be called a lien; and so effectual is it that not even a judicial sale of the interest of one partner, made to satisfy his personal debt, will impair its operation. It is so far-reaching that it is not destroyed by a sale for a fair price and with honest intent made to a third person who purchases with notice that he is buying the property of an indebted partnership; but, notwithstanding such sale, the partnership creditor may still pursue such partnership property, if it can be reached in kind, and if it cannot be so reached, *he may compel such purchaser to pay him the value of the property so purchased in satisfaction of his claim.* All this is insured to the partnership creditor *directly*, without the assent or co-operation of any partner;—all this such creditor *may demand in his own name and right.* See Note A" attached

At this point, if the court may be presumed to inquire, "Why was not the above proposition more distinctly urged and demonstrated, if that may be done, when the cause No. 167 was orally argued?" it enables the writer to explain that, so far as he is interrogated, he can but confess that not until the petition for a rehearing in that case was being prepared was he made fully aware how essentially the Louisiana Code enlarged and insured the rights of creditors of a copartnership; while as to the counsel who instituted and mainly conducted that suit in both courts, the fact may be that he was so sanguine of success upon common law and general equity principles, that he did not

press the surer provisions of the code as he could well have done,

Perhaps, also, some other provisions of that code contributed to the confidence of both counsel and client; as, for example, *art.* 1984 of sec. 2, as to suits by creditors to avoid contracts, which declares "all contracts made by an insolvent debtor, giving one creditor a preference, fraudulent and void;" also *art.* 1975, sec. 1, upon same subject, which specifically prescribes that "a plaintiff may join the suit for annulling the contract to that which he brings against the original debtor for liquidating his debt by judgment," &c., *thus dispensing with the necessity of procuring a judgment at law preliminary to asking the aid of a court of equity.* They may not have sufficiently regarded the rule that State laws may control and fix the rights of parties in the Federal courts, but cannot interfere with the remedies as administered by these tribunals.

This last idea brings to view the further suggestion, that the above proposition could have availed nothing in that original suit because of fatal defects in that bill; and it enables the writer to add, once for all, that he has not even the disposition to quarrel with the judgment of this court in said cause No. 167, nor with the opinion, as enunciated from the bench, in the same cause in the court below. Mature reflection and more critical examination of authorities have convinced him, in opposition to earlier impressions and hopes, that the complainant could only expect the relief asked, under what was *in fact*, as well as by technical name, a "CREDITOR'S BILL," and of that class, too, showing that, so far as could reasonably be demanded, legal remedies had been attempted and had failed.

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From this last explanation it is but natural to pass to a discussion of the errors complained of, considered as technical, abstract legal propositions.

First. When the present cause was heard upon said pleas by said Circuit Court, said respondents put in evidence a transcript of the whole record in said cause No. 167, (No. 5931 of the said Circuit Court,) and hence it all appears in the record now to be considered, constituting its chief bulk. (Record, pp. 75 to 257.) From said transcript it appears that neither the original nor amended bill, upon which said cause No. 167 was heard below, contained any averment that upon the said alleged debt, due from said copartnership to said bank, the said complainant or said bank had obtained any judgment at law against the said copartners, nor either of them, either for the whole or any part of said debt; and, as no such judgment was averred, so said bills failed to show the issuing of any writ of execution from any court to collect said debt or any portion thereof, or any return of *nulla bona* upon any such execution. The insolvency of said partners was fully averred, but, as will soon more fully appear, this was deemed insufficient. And the want of averments, as above indicated, was held to be a fatal defect. Because of such defect said suit was dismissed.

But little time will be spent in showing that said decision was in accord with the entire and great volume of equity decisions;—that the averments of recovery of judgment at law, the issuing of an execution or executions thereon, and the return of such executions with the marshal's indorsement of *nulla bona*, &c., were in fact *essential to give said Circuit Court jurisdiction.* We are aware of certain exceptions to the general rule. They are not involved in the present discussion. The adjudications are so numerous that the only embarrassment felt is as to selection. And yet, strange as it may appear, this point is vital as to the issues now to be settled.

From a long list we cite as follows:

Dix v. *Briggs*, 9 Paige, 595.

Morgan v. *Crabb*, 3 Port., (Ala.,) 470.

entirely proper thus to characterize it, because it was an

Brinkerhoff v. *Brown*, 4 Johns. Ch. R., 674.
Williams v. *Brown*, 4 Johns. Ch. R., 682.
Trego v. *Skinner*, 42 Md., 426.
Tyler v. *Peatt*, 30 Mich., 63.
Mixon v. *Dunklin*, 48 Ala., 455.
Cubbege v. *Adams*, 42 Ga., 124.
Peyton v. *Lamar*, 42 Ga., 131.
Dunphy v. *Kleinsmith*, 11 Wall., 610.
Jones v. *Green*, 1 Wall., 330.
Newman v. *Willets*, 52 Ill., 101. ×

Of all the above authorities the case last but one cited is, perhaps, as certain and unequivocal as any. At the bottom of page 331 and following on page 332, Mr. Justice Field, speaking for an undivided court, says:

"A court of equity exercises its *jurisdiction* in favor of a judgment creditor, only when the remedy afforded him at law is ineffectual to reach the property of the debtor, or the enforcement of the legal remedy is obstructed by some incumbrance upon the debtor's property, or some fraudulent transfer of it. In the first case, the court, when its aid is invoked, looks only to the execution and the return of the officer to whom the execution was directed. The execution shows *that the remedy afforded at law has been pursued*, and, of course, is the highest evidence of the fact. The return shows whether the remedy has proved effectual or not, and from the embarrassments which would attend any other rule, the return is held conclusive. The court will not entertain inquiries as to the diligence of the officer in endeavoring to find property upon which to levy. If the return be false, the law furnishes to the injured parties ample remedy.

"In the second case, the equitable relief sought rests upon the fact that *the execution has issued and a specific lien has been acquired upon the property of the debtor by its levy*, but that the obstruction interposed prevents a sale of the property at a fair valuation. It is to remove the obstruction, and thus enable the creditor to obtain a full price for the property, that the suit is brought."

× Smith v. R.R. Co. 99 U.S. 398, just reported seems conclusive

The foregoing decision is full and conclusive, showing that, in order to confer *jurisdiction* in said No. 167, the bill should have averred recovery of judgment at law, the issuing of execution, and the due return of such execution unsatisfied—such return showing that it could not be satisfied; for it will not be insisted for a moment that the aid of the chancellor was invoked upon the second ground stated by *Mr. Justice Field.*

The court below took this view of the law. Hence we find *Mr. Justice Bradley*, in the written opinion then delivered, (Record, p. 259, at the beginning of manuscript page 648,) saying:

"As to the other ground on which the bill is founded, namely, that partnership property must first be applied to the payment of partnership debts, and cannot be disposed of by the individual partners for their private purposes, or for the payment of their private debts, the difficulty of the case consists in the fact that the plaintiff has no judgment or execution, AND THEREFORE NO STANDING IN COURT!

"The general proposition on which he bases his claim is true, AND IF HE WERE A JUDGMENT AND EXECUTION CREDITOR, I SHOULD NOT, AS AT PRESENT ADVISED, HAVE MUCH DIFFICULTY IN SUSTAINING HIS CLAIM."

His honor reiterates this view on page 261; while his oral language, following what he had reduced to writing, was still more decisive. This is set forth in the testimony of several witnesses, (Record, pp. 63 to 70,) and if such evidence is an anomaly, it has at least this apology: *it is true.* The honorable judge *did* dismiss said bill, because it nowhere appeared that complainant was a judgment and execution creditor, and for no other reason whatever. On the contrary, he did say that but for this technical objection he could and would give the complainant a decree for the amount of his claim. It is certain, too, that he spoke of the objection as being technical, and in one sense it was entirely proper thus to characterize it, because it was an

objection that did not go to the merits of the *equitable relief* sought by the bill, and yet, as we have seen, no creditor's bill of like character can be sustained without such averment of judgment and execution, and in this sense it is something more than a merely formal allegation. It is an averment essential to give the court jurisdiction.

The opinions of text writers can hardly be essential, but *Mr. Bispham*, in his recent terse treatise on "*Principles of Equity*," sec. 527, states the rule as to creditors' bills so forcibly that we quote his words. He says:

"It is incumbent on complainant, as a general rule, to show that he has exhausted his common-law remedies," &c. "This is generally done by showing that he has obtained judgment, has issued execution, and that there has been a return thereof *nulla bona*. *And these facts must be averred in the bill to give the court jurisdiction*, for otherwise it would not appear but that the party had a complete remedy at law."

It follows, that even if it were true that the honorable judge did undertake to go further and pass upon the equitable rights of parties, such rulings were mere *obiter dicta*, for he had in effect decided that he had no jurisdiction of the case.

Second. The foregoing would seem to be decisive as to the first error assigned. The bill in the case at bar *did* show that, so far as was possible, the complainant had exhausted his remedy at law by the recovery of judgments against all of said partners within the jurisdiction, and by causing executions to be issued on said judgments, which executions had been duly returned *nulla bona*. In short, the difference between the bill in the case at bar and the bill in said No. 167, was and is precisely the difference between a bill showing complete jurisdiction and one which upon its face conferred no jurisdiction whatever. Surely we need not stop to insist that a decision upon a bill of the

latter character, dismissing the cause for want of jurisdiction, cannot be pleaded in bar to a bill in this respect filling every requirement of equity practice, and showing a cause of which the chancellor can and ought to take cognizance on the merits. The very statement of the proposition is the end of the argument. As to this point, it was not even essential to show that the court below did dismiss said bill in No. 167, for the want of jurisdiction. The record shows that it was the only decree the honorable judge could legally render, and without any proof the presumption would be that he had rendered such decision, and no other.

In this connection we may properly cite the cases, and need do no more, establishing the proposition that while State laws control in the Federal courts *as to the rights of parties*, yet when the relief sought is equitable in its nature, the remedy in said courts must be by bill in chancery, and such bill must show a case for chancery jurisdiction. We cite

New England Screw Company v. *Bliven*, 3 Blatchf., 240.

Cooper v. *Coburn*, 2 Curt., 465.

Livingston v. *Story*, 9 Pet., 632, and same case, 11 Pet., 351.

Robinson v. *Campbell*, 3 Wheat., 222.

Neves v. *Scott*, 13 How., 268.

Barber v. *Barber*, 21 How., 582.

Payne v. *Hook*, 7 Wall., 425.

It remains to consider a single point, to wit, the fact that no judgment was obtained against Graham. As to this, we have to suggest that the judgments against each of the other two partners virtually fixed the amount of Graham's liability. The partnership was one peculiar to Louisiana, defined by the code as an "ordinary partnership," in which, according to the same code, each partner is liable for the debts in proportion to the number of members, and this

liability is called his *virile* share. Hence, when it was found by verdict and judgments that May and Beauregard were bound for one-third each, it followed that Graham's liability was the same.

Furthermore, when it appears by the record that Graham was and is so hopelessly insolvent as to be living upon the charity of his friends, (see testimony of Forbes, pp. 227, 228, and Louis Meig, p. 219,) we feel constrained to quote as all sufficient the legal maxim, "*The law requires no vain thing.*"

But we think the question is at rest upon authority, and refer the court to the following decisions:

Pendleton v. *Perkins*, 49 Mo., 565.
Hyler v. *Hetterick*, 5 Daly, (N. Y.,) 33.
Produce Bank v. *Morton*, 67 N. Y., 199.
Scott v. *McMillen*, 1 Litt., (Ky.,) 302.
Card v. *Letcher*, 3 J. J. Marsh., (Ky.,) 443.
McCrae v. *Bank West Tennessee*, 6 Coldw., (Tenn.,) 474.

Graham was not within the jurisdiction, and, legally speaking, was out of the country.

With a few words in anticipation of an objection that may be raised, we leave this point. It may be said we seek the same equitable relief in this case as in said No. 167, and if the court below denied us such relief in the last-named case, such denial must be a bar to the aid now asked. We answer, first, the statement is not perhaps strictly accurate; but for the present conceding that, we say secondly, as already suggested, that we were denied the relief prayed in 167 because that bill and proofs showed we had then no right to invoke the chancellor's aid. Therefore, said the judge, "*the plaintiff had no standing in court.*" The present bill (which, as to this point, is to be taken as true) does show that we are ready and have the right to ask the assistance of equity. Consequently the plaintiff

now has a standing in court. We repeat, the difference is that between a bill showing and one showing *no* standing in court.

Third. Coming now to consider the questions in controversy in a broader, less technical sense, we have concluded at this stage to take up and demonstrate our leading proposition, postponing minor but not unimportant points for subsequent discussion.

It is scarcely necessary to do more than call attention to the preliminary proposition, already suggested by inference, that, as regards the rights of creditors of a partnership, if the law of a particular State makes them greater or less than they are at common law, or by commercial law or ordinary principles of equity, the law of such State furnishes the rule of decision in this court as to a case involving such rights and arising between parties in such State. If the law of such State confers a right in its nature equitable, though in addition to or derogation of ordinary rules of equity, the remedy in a Federal court must be on the chancery side of its jurisdiction, and according to the established rules and forms of practice peculiar to that jurisdiction. This, as a legal proposition, is clearly established by the cases cited *supra*, (p. 21,) amongst which the case of *Livingston* v. *Story*, as reported in 11 Pet., 351, is an interesting illustration of the principle above asserted, although the facts were in no way analogous. Its details need not be repeated. In the case in 3 Blatchf., 240, the court says: "State statutes are rules of decision in the courts of the United States when they prescribe a law governing the *right* or title in litigation, but are not allowed to interfere with the processes or modes of procedure of these tribunals." A case in Bald. C. C. R. is cited, in which, on page 275, Baldwin, J., says: "State laws which furnish the court a rule for forming a judgment are binding on a Federal court, but State laws for carrying that judgment into effect

are not." The case of *Titus* v. *Hobart*, 8 Mass., 378, is also in point, and numerous other decisions could be cited, but surely it is unnecessary.

Our leading proposition is predicated upon the statute law or code of Louisiana, and we shall not stop to cite authorities to the proposition that the decisions of the highest court of that State, as to the meaning and effect of that code, furnish the rule of interpretation in this tribunal, as they should have done in the court below.

The position now asserted (and which appears in full on p. 15) is substantially that the code of Louisiana secures to the creditor of a partnership a specific preference and *privilege* against the partnership property, by virtue of which such creditor *must* be paid from such property, to the exclusion of all creditors of individual members of such firm; that this preference is so effectual that it cannot be destroyed by a judicial sale of the interest of one partner, nor by a sale of the entire partnership assets, made, without fraud and for a fair price, to a third person who purchases with notice that he is buying the property of an indebted partnership. Such partnership creditor may compel such purchaser to account for the value of the property thus purchased; and for all this the right of such creditor is *direct*, not hampered by the common-law theory that his rights must be worked out through the co-operation of a partner.

Before citing the provision of the Louisiana code involved, or the decisions of the courts of that State construing and giving effect to that provision, we ask the court to note the fact that up to the time when part of the negotiations involved were removed to Washington, and even then and thereafter, all the parties who assumed to purchase the rights and interests which said May had assumed to transfer to the United States seemed to have entertained no doubt that these partnership assets would be held liable

for the satisfaction of this bank debt, unless it was otherwise provided for. The first contract of sale between Bell, as United States agent, and Boneval, Binder, and Hernandez, being executed at New Orleans, where the local law was well understood, was made to contain an absolute promise on the part of the United States to pay the bank debt so far as its actual amount was then certainly known; but this contract being transferred to Washington and submitted to the revision of the Solicitor of the Treasury, who probably was not familiar with the difference between the common law and the Louisiana code as to the rights of partnership creditors, this officer assumed (whether he could legally do so or not) to repudiate this promise of the government, and in lieu thereof simply stipulated that the United States would protect said purchasers from all liability on account of said bank debt. Even at Washington it seems said purchasers would not touch said assets without such guarantee on the part of the government, which was practically as good to them as the absolute promise, and we venture the assertion that no Louisiana lawyer worthy of the title would have dared to advise them to any other course. True, the understanding of parties, nor even of jurists, does not make law, but sometimes it is some evidence of what it is.

We now ask the most rigid scrutiny of the provision of the Louisiana code relied upon, to wit:

"Article 2823. The partnership property is liable to the creditors of the partnership *in preference* to those of the individual partner; but the share of any partner may, in due course of law, be seized and sold to satisfy his individual creditors, *subject to the debts of the partnership;* but such seizure, if legal, operates as a dissolution of the partnership."

The simple quotation of this article would seem to be sufficient for the present purpose. It is not equivocal. It does not say "the partnership property is liable to the part-

nership creditors, provided any partner so determines," nor does it say such property shall be thus liable provided the individual partners do not first, either jointly or each by his own act, devote it to individual uses, but it prescribes that the partnership creditors shall be satisfied *in preference*, and if such property, or the interest of one partner therein, is sold judicially, it must be done subject to the partnership debts.

As to these provisions a brief explanation may be of service, and the writer can scarcely do better than quote language heretofore used. He then said:

"The word *lien* is not a common technicality of Louisiana law, but the word *privilege* is its equivalent; and the phrase *in preference*, or *by preference*, has often the same signification. Article 3186 of the code defines a privilege as 'a right which the nature of the debt gives a creditor, and which entitles him to be *preferred* before other creditors, even those who have mortgages.'

"Now, this definition could be changed to read, 'and which entitles him to be paid in preference, or by preference, before other creditors,' and the sense or meaning would be the same. Thus it appears that the words by preference, or in preference, are the significant ones to define what a privilege is, as growing out of the nature of a debt; and when it is considered that partnership assets are subjected 'in preference' to the partnership creditors because of the nature of their debt, to wit, because it is a debt against the firm, it is very clear that article 2823, by its own language, directly secures to such creditors a privilege, or lien.

"See, furthermore, the limitation upon the power to seize and sell by due course of law to satisfy the individual creditor of a partner. It can only be done 'subject to the debts of the partnership'; but surely the Legislature must have intended that a sale by such process should confer as much title as a partner could confer by private sale with notice. And thus it is clear the intent was that the privilege should attach to the property in the hands of any purchaser taking it with knowledge of its character. Of course, the purchaser of a partner's share under legal seizure and sale

must necessarily buy with such knowledge. Now let us suppose some facts in illustration. A and B are partners, owing firm liabilities, and each being individually the debtor of C. C procures a judgment against each partner, by virtue of which he seizes upon, sells, and bids in the individual shares of A and B in the firm; that is to say, upon the judgment against A he seizes A's firm interest, and upon that against B he seizes B's interest, and duly bids in both at sheriff's sale. Thus he becomes the owner of all the partnership effects; but according to the literal wording of article 2823 he holds such effects subject to the preference thereby given to firm creditors. This is too clear for argument. But suppose, instead of resort to legal process, A voluntarily assigns his share to C, and B subsequently makes a similar assignment, each being made to satisfy their individual debts, and C taking such transfers well knowing that he is becoming possessed of what had previously been partnership property: Will it be for one moment pretended, that in the first instance the preference continues, while in the last it is extinguished? In other words, that a partner can secretly and privately do what the law says cannot be accomplished by public legal proceedings? There can be but one rational answer to these questions, and this is fully sustained by authority, as will appear by numerous decisions of the Supreme Court of Louisiana, which will here be cited."

These decisions will not be cited as they occurred chronologically after said article 2823 was adopted, in precisely its present form, in 1825, but we will quote first a more recent decision, because we can find none in the entire list more clear, more explicit, and none that in so few words covers the entire ground under consideration. It is the case of *Perry Syndic* v. *D. Holloway*, 6 Ann., 265.*

The facts were briefly these: Some years before the suit was brought, Holloway had bought at sheriff's sale the interest of one partner (Powell) of the firm of Harris & Co.,

* When said cause 167 was argued, by some oversight, the attention of this court was not called to this, the most explicit of all the Louisiana decisions; nor was it cited in complainant's brief then submitted.

and afterwards purchased the interest of the other partner (Harris). Thus the assets of the partnership had passed out of the control of the partners *into the hands of a third party.* There is no charge of *mala fides* in regard to these sales, though it is charged that afterwards Holloway acted in bad faith towards certain individual creditors of Powell, *and he knew he was purchasing partnership assets.* On page 266 the court say: "*By buying out the interest of the partners and receiving all the assets, he (Holloway) became himself the debtor of the creditors of Harris & Co., at least to the extent of these assets.*" And he was held liable accordingly.

We most earnestly hope this court will critically examine this case as it appears in the report, for we have said, and here repeat, that unless it can be overthrown, (and of that we have not the least fear,) it demonstrates our leading proposition, and consequently is decisive of the present appeal. Is this a mistaken view? Does not the case stand upon the theory that the preference conferred upon creditors of a partnership amounts to a privilege upon all the partnership assets? Unless it does amount to such privilege, how can any right remain to a partnership creditor to be satisfied from the value of the partnership assets, not only after the partnership has been dissolved, but after all such assets have passed by sale into the hands of a third person for a fair price, and in good faith, even if such transfer was with full notice? Yet, does not the case hold, in substance, that after just such a transfer the purchaser may be adjudged to pay the partnership creditors the value of the assets so purchased? We say it was a case of transfer without fraud and upon adequate consideration; perhaps we might better say, if either of these objections existed, it was deemed unimportant. It was enough that debts of the partnership remained unpaid, and that Holloway took the assets with knowledge of this fact. We say again that upon this case alone we occupy an impregnable position.

Some two years since it was the pleasant task of the writer to search for authorities upon a question of interest individually to a member of this court. At first view it seemed to be one upon which decisions would be abundant, but after most exhaustive research, but two could be found having any bearing, and only one (a New York case) exactly in point. The result was duly reported, and a few days thereafter, his honor, meeting the writer, said: "That New York decision you gave me just covers my case like a plaster; it fits every spot." So say we of the case above cited.

We shall now refer to several other cases, chiefly to show that the entire current of Louisiana decisions is in harmony with and confirms Perry *v.* Holloway, though some of them have important bearings upon other points. First of this series we cite *Morgan* v. *Creditors*, 8 N. S., 606. This case was not only decided at an early day after the adoption of the code, but it was decided by a jurist second to none the State has ever known. We make but a single extract from his opinion. Speaking of the legislative action in regard to this very article 2823, he says:

"Had the new code been absolutely silent on the distribution of property of persons engaged in commercial partnerships, in case of insolvency, we might conclude they have left the matter to be regulated by the preëxisting provisions. But they have acted upon the subject; they have given a *privilege* to creditors of a partnership on the partnership estate; have, by a general clause, abolished the privilege of separate creditors of a partner on his separate estate. It is our duty to conclude that the Legislature has acted on the whole subject in the civil code, and left nothing in this particular to be regulated by the commercial law."

This was the language of Judge Martin, who was not only eminently learned in the technical words and phrases of the civil code, but too critical and accurate in his utter-

ances to use the words or phrases in any other than their legal sense, especially when such words have a well understood technical meaning. Bearing this in mind, note the purport of his language. It is doubly significant: holding, first, that a *privilege* has been conferred; and secondly, that this privilege is given, not to the partners, not to the creditors through a partner, but *directly to the creditors*. Finally, he holds that the code covers the entire subject to the exclusion of commercial law.

Smith v. McMicken, 3 Ann., 319: In this case a partnership creditor had levied upon and sold a judgment which was a partnership asset; and the question was as to the validity of such sale, &c. In the opinion delivered the court define many of the attributes of a partnership as prescribed by Louisiana law, and point out some of the differences between the law of that State and the common law as to the rights and powers of partners, which cannot be here quoted at length. But the court say: "A partnership once formed and put into operation becomes, in contemplation of law, a moral being, distinct from the persons forming it. It is a civil person, which has its rights, attributes," &c. * * * "Therefore a partnership creditor cannot seize an asset of the firm, or the interest of one partner in such asset, but must await a final adjustment," &c. * * * "If numerous creditors of the partners may seize and sell particular assets, how can the partnership be liquidated? The partnership assets *are a trust fund for the partnership creditors*, who are to be paid before the respective partners or their creditors can receive anything. If a creditor of a partner could wrest control of the assets from the partnership, he could do what a partner himself could not, which would be in direct conflict with article 2841 (now numbered 2870) of the code, which provides that "every partner may make use of the things belonging to the partnership, provided he employs the same to the uses

for which they are intended, and does not use them in such a manner as to prevent his partners from using them according to their rights or against the interest of the partnership." The court adds: "If doubts existed on this subject in our courts, and the practice has grown up of seizing the assets of the partnership, instead of seizing the residuary interest of the partner in the hands of the partnership, it has arisen from looking to the English authorities as laid down by the courts of common-law jurisdiction—authorities which we cannot follow on this subject, without breaking down our own jurisprudence."

In the above case, it will be observed, the court says the partnership assets are *a trust fund* for the partnership creditors. It was upon the idea that this was the theory of the Louisiana code, and confirmed by other State adjudications, that counsel below, in said No. 167, confidently believed that said suit could be maintained without the aid of judgment and execution at law; and he still maintains that opinion, and is by no means alone in it. But we cite the case here and now as confirmatory of *Perry* v. *Holloway*, for if Louisiana law treats partnership assets as a trust fund for partnership creditors, it is certainly tantamount to conferring upon such creditors a privilege. The case also shows how completely the code controls partnership interests.

In *Saloy* v. *Albrecht*, 17 Ann., 75, the language of the court is: "The partnership property is the common *pledge* of the partnership creditors, who must be paid out of it before individual creditors of the members." If, as counsel for defendants on a former occasion said, the word pledge was here loosely used by the court, it is safe to reply, that in using it, it was at least meant to recognize the privilege of the partnership creditors.

In *The Succession of Beer*, 12 La. Ann., 698, Merrick, J.,

says: "This case presents the single question of whether the sale made by two of three members of a commercial partnership to the third partner deprives the creditors of the partnership of their *privilege* upon such effects of the partnership as may be found in the succession of the latter" (third partner). He cites article 2823 of the civil code, and then, on page 699, says: "Here the privilege is given to the creditors by express law. It is now incumbent on the party who maintains the loss of the right *thus expressly granted* to show some provision of the law extinguishing the privilege in this case, or exempting it from the operation of the general rule. None such has been shown." Again citing from the code, he continues: "On general principles, we think it ought not to be in the power of partners, by any act between themselves, to defeat the rights of creditors, and the partnership effects must be held to be subject to the privilege so long as they remain in the hands of any of the partners." The closing language of this case is the strongest that can be cited against us. We might say in regard to the last words, they were loosely uttered—not duly weighed; but prefer to say, it was not necessary for the court in this instance to go beyond what was expressed, while in Perry *v.* Holloway it was essential to decide whether a *bona-fide* purchaser with notice could be held liable, and it was adjudged that he could and should be so held. There is no actual conflict between the two cases.

Priestly v. *Bisland*, 9 Rob., 425, is a leading and important authority. It is not only "on all-fours" with *Perry* v. *Holloway*, but it establishes that, notwithstanding an ordinary partner is only bound for his share of a partnership debt, the entire effects of such partnership are subject to the creditor's privilege for such debt.

It was a case where one member of an *ordinary partnership* caused his partner's share to be seized and sold to

satisfy a debt due to him individually, and became the purchaser. Afterwards, certain creditors of the partnership sought to enforce their privilege as such upon the partnership property in the possession of the purchasing partner. The question was, whether the property of the partnership, now entirely owned by Bisland, was liable in his hands for the payment of the joint debts? The court said: "We think it is. Bisland, who is one of the partners, took the property in payment of a part of his individual debt; but he must be presumed to have been cognizant of the claims standing against the partnership, and to have purchased the property subject to the rights of the creditors, who cannot be prejudiced by any act of the partners between themselves." Then, quoting article 2794 (now 2823) of the code, the court continued: "It is perfectly clear, from this text of the law, that when Bisland caused his partner's share to be seized and sold to satisfy his individual claim, and became the purchaser of said share, *he bought it subject to the payment of the partnership debts;* and if so, he stands, with regard to the creditors of the partnership, in a situation very similar to a third possessor of property mortgaged, who is bound either to abandon the property to the exercise of the creditor's right of action, or to pay the debt. *How this would be with regard to an innocent third person becoming the purchaser of partnership property without notice, is a different question, which it is now unnecessary to consider;* but we are satisfied as to Bisland, who had either a real or constructive notice, that he cannot object to the preference which the law gives to the partnership creditor who finds the partnership property in his possession.

The importance attached to notice in this case is worthy of note; as is also the illustration likening such purchaser to a third possessor of mortgaged property. He must either pay the claim of the creditor or surrender the property to be applied to the satisfaction of the debt.

It may be added that the fact that Bisland had been originally a partner neither placed him in a worse nor better position—certainly not worse—than if he had been a third person purchasing the shares of all the partners, but with notice of unpaid partnership debts. Article 2864 of the code provides that "a partner may be a creditor of the partnership."

Gardner v. *Smith*, 12 La., 371, though not well reported and lengthy, is too thoroughly in point to be omitted. We ask the court to observe that, as in all the other decisions, the language of the State tribunal is unequivocal as to the right secured to creditors of a partnership being one that inures *directly* to such creditors. That language is, "*no act of the partners could destroy the right of the creditors of the firm to its effects*"—not their right to be paid from such effects if one partner so wills, but *their right to the firm effects.* Whatever may be the defects of the Louisiana code, it has at least this virtue: it utterly ignores the nonsensical theory of the common law that the imaginary thing "sometimes loosely called the lien" of a partnership creditor, rests solely on the lien of each partner, and vanishes into thin air if the partner, for any reason, yields or abandons *his* right!

Another point raised in *Gardner* v. *Smith* was, that as all the partnership effects had passed from the firm before the partnership creditors asserted their preference, they could no longer insist upon it; but this theory was repudiated.

The suit was by attachment brought by plaintiffs as acceptors of a bill of exchange for $4,100, drawn by defendant, of Mississippi, which they alleged they accepted and paid upon an agreement that defendant, with the proceeds, should enter for them five sections of land. They averred that defendant Smith misappropriated the money; prayed for judgment for amount of the bill and $2,500 damages, and for an attachment against the property of Smith in the hands of George Chaplin & Co., of New Or-

leans, and that the latter be cited as garnishees, which was done.

The garnishees being absent, their agent answered that they had no property in their hands of the defendant Smith, but that if Smith was a partner in the firm of Turner H. Jackson & Co., he had an interest as such partner in certain property which had been taken from the garnishees by the sheriff by virtue of the attachment in that suit. It was also stated that said garnishees had held other property of said Jackson & Co., which had also been taken by said sheriff in another suit against Smith. Said agent set up, on behalf of said garnishees, that they had a *privilege* on all said property of said Jackson & Co., because of certain debts, &c., due from said firm to said garnishees, amounting to $3,075, which he prayed might be enforced, &c. The attachment was levied October 1, 1836. Garnishees' answer put in October 7, 1836.

On the 13th February, 1837, said garnishees sued out an attachment against said Jackson & Co., based upon their claim, and seized the said property already in the sheriff's hands; but meantime, January 8, 1837, the firm of Jackson & Co. was dissolved, and Jackson sold his interest to Smith and others.

Jackson intervened in the original suit, and alleged that the goods attached were the property of said Jackson & Co., and not of said Smith; he further averring that Smith had no interest in said goods that could be attached for his debts, because said Jackson & Co. had made no profits, &c.

One point made in the Supreme Court was, that as said garnishees had not sued until after the firm of Jackson & Co. was dissolved and its assets transferred, they could not attach such assets as against such vendee, and claim their privilege as partnership creditors. But the court said: "The only question is, whether the property attached belonged to defendant individually at the date of plaintiff's

attachment. The appellees rightly contend that in did not, because no act of the partners could destroy the right of the creditors of the firm to its effects; and if the property passed at all to the defendant, he took it subject to the burden imposed by law."

Bank of Tennessee v. *McKeage*, 11 Rob., 130. This is another strong case; but when informed that the Louisiana tribunal waded through a record of 800 pages to determine whether certain assets involved were individual or partnership property, and this because they held that the privilege of the creditors of the partnership must control, if the assets belonged to the firm, this court will excuse any extended abstract of the case.

Many other pertinent decisions could be cited, but we forbear. Of course those already noticed are not new to this court, but they have not before been presented as demonstrating, so conclusively as they do, our leading proposition.

Two incidental points require brief notice.

1st. In the opinion of Mr. Justice Bradley, (Record, p. 260,) he says: "Had all three of the partners *joined* in an assignment of the entire property of the firm, the purchaser *in good faith* could undoubtedly have held the property;" and, on another occasion, counsel for respondents stoutly maintained that because, by one act and another, the partners had transferred all the partnership effects before the claim of the bank was asserted by suit, its remedy was gone. Commentaries of French writers, arguing that some provision of the Code Napoleon, or some other code, or perhaps of the one now in force, had, or should have, this effect, were gravely translated and read to the court in support of this theory!

We reply: The statement of Judge Bradley is correct beyond dispute, as applicable where common law controls,

and where, consequently, a partnership creditor "has no right that a court is bound to respect," save such as may accrue through the prior right of the partner or partners. The very act of making such joint assignment would be the most unequivocal abandonment by each partner of his right to have the firm assets applied in discharge of firm debts, and with such abandonment the *quasi*-right of the partnership creditor falls.

It may be, too, that the same rule, as well as the synonymous proposition of respondents' counsel, would hold good as regards the majority of *commercial* partnerships in Louisiana, to wit, partnerships formed for mercantile purposes; though we do not admit or believe it does. The chief purpose of such partnership is to *sell* for profit the property bought; and it may well be that in buying from such a firm, even the entire stock, a *bona-fide* purchaser would be safe. But for the direct methods of the Louisiana code, and above all the adjudications, we should feel little inclined to dispute the doctrine thus limited; but that code and the decisions cited show that it has no force nor existence as regards creditors of an *ordinary* partnership in Louisiana, nor can a purchaser with notice from such a firm invoke it. It may be said the buyer from such a firm with notice is *not*, under Louisiana law, a purchaser in good faith. There is good reason, too, for a distinction, if one exists. Commercial partners, like those governed by common law, are liable *in solido*, each one for the entire amount of every firm debt, but under an ordinary partnership each partner can only be held for his virile share. It is but justice to give to creditors of such a partnership a privilege far-reaching enough to grasp and hold all assets, or their value, transferred with notice; and, as has been shown, their privilege is just this far-reaching.

Again: Whatever might have been the effect of a joint assignment, none such was made or attempted. Each

partner for himself assumed to make transfer; and, even at common law, all that each partner could thus do was to transfer such interest as might otherwise inure to him after the affairs of the partnership had been adjusted *and its debts paid.* (*Bank* v. *Carrollton R. R.*, 11 Wall., 624.) The transferee of such partner could take only the interest the latter could convey, and it follows that (with possibly one limitation hereafter to be noticed) these fused respondents, by virtue of all the assumed assignments, hold this meagre, shadowy interest in the partnership property, *and no more.*

In this connection we are constrained to add, that while the managing partner of a commercial firm may perhaps be presumed to have power to dispose of the entire partnership stock, if done for the interest of all, no such power inheres in the managing partner of an ordinary partnership. If it exists it must be by virtue of a writing made for *that* purpose. Hence it did not exist in Beauregard, and hence, as we respectfully submit, the ordinary power of attorney given by Graham to May conferred no such authority upon the latter as to Graham's interest. This proposition results as well from the nature of an ordinary partnership as from explicit provisions of the code. We cite a single decision, to wit:

Bass v. *Messick et al.*, 30 Ann., 373.

The case was this:

Under an execution issued upon a judgment rendered against "*Bass & Co.*," (a planting, and therefore ordinary partnership, composed of J. W. Bass and L. Lyon,) an engine and other movables were seized, in possession of Alfred S. Bass (not a partner).

These movables (except some mules) belonged *originally* to Bass & Co., who were insolvent and largely indebted to Alfred S. Bass and D. W. Bass, sons of J. W. Bass, one of the partners.

J. W. Bass confessed judgments *individually* in favor of Alfred S. and D. W. Bass, and transferred the property, which was seized as above, to them.

On appeal, the Supreme Court said:

"The evidence satisfies us, as it did the district judge, that these *datims en paiement* were not simulations, but real contracts, with valid considerations to rest upon. So far therefore as they transferred the property and interests of J. W. Bass, they could not be attacked *by seizure*, however fraudulent they may have been as to other creditors over whom preference was thus given.

"But, as before stated, the property transferred to A. S. Bass, and seized by the sheriff, belonged to the partnership of J. W. Bass & Co., an ordinary planting association. Plaintiff's counsel contends that as J. W. Bass was the managing partner, he had the right to sell and dispose of the partnership property *in liquidation of the partnership debts*. It is not pretended that J. W. Bass derived any such authority from the articles of partnership, nor that any special power was ever given him by his partner Lyon to do so. True, it is shown that, by Lyon's acquiescence and perhaps consent, J. W. Bass managed and administered the partnership business, but we do not think the power to alienate the property composing the capital of the firm can be inferred or implied from this fact. We think that it clearly results from articles 2867 and 2870 of the Civil Code, that the power of administration which carries with it that of alienation must be *specially* given in writing, either in the articles of partnership or otherwise.

"It is further contended that Lyon was advised or knew of these transfers by J. W. Bass to his sons, and made no objections. J. W. Bass so swears, but Lyon, who seems to be without interest in the matter, swears that they were made without his knowledge, consent, or acquiescence. A. S. Bass swears that Lyon saw him using the things for his own purposes, but admits that he does not know that he was aware of their having been transferred to him by his father. Another witness swears to a conversation with Lyon, but speaks hesitatingly about it, and, at most, says that Lyon knew of the transfer.

"We think the district judge correctly held that Lyon's

half of the property was not conveyed by the acts of J. W. Bass."

And the seizure was maintained.

The article 2867 referred to in the foregoing decision, only vests in the partner specially clothed in writing with the administration, power to do "such acts as are without fraud and, in his opinion, for the benefit of the society" (partnership). Of course his opinion must be reasonable. He could not reasonably be of the opinion that it would "benefit the society" to use all its effects in liquidating his private debt, nor for his private gains.

2d. A paragraph of article 3277 of the code, which declares that "privileges become extinct by the extinction of the thing subject thereto," may be deemed against us. There is a similar paragraph as to mortgages; and under the two, Mr. Voorhes's edition of the code gives numerous references to Louisiana decisions. We have examined all of them. Not one is of any importance as regards a case like the present. On a former occasion we suggested what was the obvious meaning of this paragraph, and will not now repeat it. For the present we prefer to ask, What was extinguished by all the transfers, including the act of fusion? And we answer, certainly not the horses, mules, harness, horse-cars, new railroad track, and many other improvements; not the $8,400 in bills receivable, nor the $11,500 cash, nor the real estate belonging to the partnership; as to all which, see act of fusion. (Exhibit L, p. 36.)

Above all, *no value* was extinguished; not even that of the lease. The Supreme Court of Louisiana, in *Perry Syndic* v. *Holloway*, *ante*, say the partnership creditor may call on the purchaser of partnership property who buys with notice, for its value. Suppose the lease was cancelled or merged, had it not a value, and could not a master readily ascertain such value, even from the acts of the parties? Look at the tale of the various transfers and act of

fusion. When May assumes to transfer to the United States an interest of two-thirds of the partnership assets, he puts the value at $480,000, equal to $720,000 for the whole. Undoubtedly this estimate was too high, while others were almost as certainly too low; but even these are not insignificant. The United States sells the interest obtained from May for $288,000, equal to $432,000 as the value of the entire partnership effects. If this valuation is unreliable, many items of the act of fusion are more satisfactory. For example, the fusion stock was valued at par, and of this amount Beauregard, Bonneval, Binder, and Hernandez received $400,000 *as the actual value of the entire partnership assets;* and we see not how the respondents are to escape from this, their own estimate. Let it be remembered, too, that nearly one-half of this value was in real estate, which the act of fusion acknowledges to have been the property of said partnership. For the purpose of affixing proper revenue stamps, the parties themselves valued this real estate at $189,070.58, (Record, p. 42,) a most remarkably precise estimate, but we may properly remark that the most sensitively conscientious business men in New Orleans were not then in the habit of *over*estimating property for the laudable purpose of paying revenue to the Federal Government. We concede that probably some deductions should be made from the foregoing estimates, but surely we have shown that respondents received partnership assets of sufficient value to cover our claim, and we repeat that, as they stand in the attitude of purchasers with notice, or in the position of third possessor of mortgaged property, they must either surrender such property or account to complainant for its value.

Is it said the lease was unassignable? We reply, defendants have recognized the interest of the partnership therein by recognizing and adopting the transfer made by May. *They* are estopped from denying that the lease was a partnership asset. As well might they deny the partnership

interest in the real estate which was purchased for its benefit, because title to portions of it was taken in Beauregard's name. The act of fusion treats the latter as the property of the firm, and we need not cite authorities to show that the law so regards it.

Fourth. To our minds the foregoing argument is conclusive, fully vindicating our assignment of errors; but we do not, because we cannot, as a legal proposition, yield the point that complainant was and is entitled to relief by virtue of those clauses of Exhibit L, (Record, pp. 37 and 39,) known as the "Act of Fusion," which stipulated that said New Orleans and Carrollton Railroad Company assumed, and bound itself to pay, the debts of said *Carrollton Railroad*, said lessee, (Beauregard,) and "said parties of the second part."

As to the true construction of the clauses referred to, we repeat the language of a former brief:

"The first provision (Record, p. 37, beginning of folio page 124) may be in one sense equivocal, perhaps because of the superfluous use of the word *company* after the word *railroad*. But when it is noticed that certain debts are excepted from the assumption, while this is not, that the phrase is, 'whether due by or claimed from said lessee,' and that this account was in express words against said Beauregard *as lessee* on the books of the bank, and so charged by his consent, there would seem to be little room for doubt as to its legal effect. If there is doubt, let it be construed to favor justice and right. The later reference in the act (Record, p. 39, top of page) is less equivocal. Let it be borne in mind that this debt was all charged to Beauregard on the books of the bank; that this was done by his consent (if not by his direction, as to which we are not positive); that he was also 'of the parties of the second part' to said act, and the language in this instance is, 'said New Orleans and Carrollton Railroad Company becomes and is liable for all the debts of said company *and of said parties of the second part*, except,' &c. Considering that

by this act Beauregard turned over, so far as he could, all the property bought or improved with the money covered by this debt, and it must be held that he intended by the above-quoted stipulation to include said debt, or that his purpose was to defraud the bank of its honest dues. In fact, Beauregard and all the other parties to said act of fusion at that time well knew that not one dollar of the indebtedness to the bank could be collected from May and Graham, or either of them. If they intended and agreed by the aforesaid stipulations to provide for the payment of said debt, then they acted, as they aver they did, in good faith; otherwise, they combined to perpetrate, and did perpetrate, a fraud."

In this connection it is pleasant to refer to the sudden, though somewhat late, and not entirely complete conversion of defendant Beauregard to our theory, as evidenced by his cross-bill. (Record, p. 262.) This court had just affirmed the judgment at law against him, and thus he became legally convinced that the entire bank claim was a valid debt against said railroad, and that he was liable for his share thereof. (Record, pp. 262, 263.) Suddenly he is equally convinced that said act of fusion bound said Carrollton Railroad Company to pay all debts of said lessee and of said Carrollton Railroad. (Record, pp. 263, 264.) This cause was already being heard in the court below. No time was to be lost. Promptly he files a cross-bill against said New Orleans and Carrollton Railroad Company setting forth the above facts and asking that said company be decreed to pay his share of said bank liability. He even went so far as to obtain leave to withdraw his plea, (Record, p. 74,) though it does not appear that it was actually withdrawn; while the inference from other record entries is, perhaps, that it remained on file. It is to be regretted that this conversion was so late, and that it was not thorough enough to result in a prayer that full justice might be done to the bank creditors; but we submit it for what it is worth.

If we are right in the theory that said Carrollton Railroad Company, by said act of fusion, did agree to pay said bank debt, we think it plain, as a legal proposition, that complainant has the right to ask the enforcement of said agreement.

In support of this theory, we cite first the Code of Practice of Louisiana, article 35, which is as follows:

"An equitable action is that which does not immediately arise from a contract, but from equity *in favor of a third person not a party to it, and for whose benefit certain stipulations have been made.* Thus, if one stipulated in a contract entered into with another person, and as an express condition of that contract, that this person should pay a certain sum on his account, or give a certain thing to a third person not a party to the act, *that third person has an equitable action* against the one who has contracted the obligation to enforce the execution of the stipulation."

In addition to this Louisiana rule, we are happy to be able to cite the decision of an eminent judge, sitting in chancery in a common-law State, viz., *Olson et al.* v. *Morrison*, 29 Mich., 395, (*Cooley*, J.)

The case was a bill in chancery, by Olson and the creditors of *Olson & Jones*, to compel defendant to pay said creditors the amount of their debts, and to have the same declared to be an equitable lien upon certain property bought by defendant of Olson, and which formerly belonged to the firm of Olson & Jones, and to enjoin defendant from conveying or incumbering the property. The bill was founded upon a contract between defendant Morrison, of Chicago, and Olson, of Muskegan, Michigan, by which Morrison agreed to pay Olson "one thousand dollars in hand, one thousand dollars in ninety days, *and to assume and pay all the debts of Olson & Jones*, in consideration that Olson should convey to Morrison by warranty deed the undivided half of Olson & Jones' mill property in Laketon, Michigan, and execute a bill of sale of all the personal

property heretofore held and owned by Olson & Jones and used in and about said mill and mill business." The court below decreed in favor of complainants, and the case was taken to the Supreme Court, where *Cooley*, J., delivered the opinion, as follows:

"The creditors of Olson & Jones were entitled to a common relief under the contract between Olson and Morrison, and might very properly unite in a suit to obtain it. Olson was also a proper complainant, (it is not said he was a *necessary* party,) because interested in the payment of the debts, and also because a party to the contract. Jones *might* have been made a party, but there is no sufficient reason requiring it. It was not necessary for the creditors to obtain judgments before filing the bill. Morrison had purchased a property which belonged to the partnership, and *which constituted a fund for the satisfaction of their demands*, and having agreed, in writing, to assume and pay these as a part of the price, he had thereby recognized their equitable lien, and there is no more reason for requiring the several creditors to put their demands in judgment at law than there would be in the ordinary case of settlement in equity of partnership affairs.

"Nor should the creditors be required first to exhaust their remedy against Olson & Jones before proceeding against Morrison. The latter, by assuming the debts, has taken the place of the parties primarily responsible, and is precluded from insisting that parties whom he has undertaken to relieve shall be pursued.

"The creditors might have sued Olson & Jones, but were at liberty to do what they have done. So Olson had a remedy at law against Morrison on the contract, but the equitable remedy was so much more complete, embracing as it did what might otherwise have been numerous suits, with a possible necessity of final resort to equity, that the right to elect is unquestionable. Decree affirmed with costs."

It is no objection to this last authority that it goes further than is essential for present purposes.

Before concluding the argument, perhaps something more

should be said as to the interest of Graham in said partnership, and the authority of May under his said power of attorney to transfer said interest; but we think we may well be content with the pertinent remarks and conclusions of Mr. Justice Bradley upon both these points, as set forth in his opinion. (Record, p. 260.)

We had thought also to make a point as to the authority of the Solicitor of the Treasury to sell under the statute; but as we have endeavored to put this argument upon the high ground of justice and equity as prescribed by law, so now we refrain from resort to any more technical position. We only say, in self-vindication, if the Solicitor had advertised for such sale, perhaps it would have come sooner to the knowledge of the Receiver that the promise of the Government, as expressed in the contract made by Bell, had been repudiated, and consequently said suit No. 167 would have been brought at an earlier day. This court can now see why it was not sooner appealed. That appeal was taken at the last moment, out of abundant caution, after an adverse ruling by the court below in the present case. There has been no tardiness in this suit.

And now, as, for a moment, the writer lingers to take a final retrospect and observation of a matter which for ten long years has excited his deepest anxieties and profoundest study, he finds himself at the end struggling for a forlorn hope, single-handed and alone, save as sustained by the hearty sympathy of his chief of the Currency Bureau, who still feels that effort must not cease while a single plank remains afloat, and with nothing to encourage save his steadfast confidence in judicial patience, ability, and impartiality. Such being the outlook, perhaps he should encounter defeat with less regret than would surely result. But if, on the other hand, success may attend this last effort, he will not only regard it as the proudest achievement of

his professional experience, but, above all, will ever contemplate it as one of those signal triumphs of right which, like clustered stars, will ever shine as fadeless jewels in the diadem of this HIGH COURT OF JUSTICE.

CHARLES CASE,
Of Counsel for Appellant.

Nota Bene.—The writer of this brief had nothing to do with the conduct of this cause in the lower court; nor was his testimony taken until after he had ceased to be receiver of the bank. As to Mr. Rouse, of counsel, it is but just to add, that although he also was sworn as a witness, he was called by the other side.

ADDENDUM.—NOTICE.

This brief, as the Chief Justice may be aware, was largely dictated while the author was too ill to write—too ill for clear thought. Hence some of its crudities.

It is not exact in regard to notice.

Subsequent reflection satisfies the writer that the rule here applicable is this, viz.:

When the purchaser of the assets of a partnership in Louisiana acquires them with knowledge of their character, and also with notice that partnership debts remain unpaid, this is sufficient to render him, or such assets, chargeable. Such notice is enough to put him upon inquiry, and *he must, at his peril, inquire and learn the amount of such debts unpaid.* Tested by all established, applicable analogies, this is clearly the true rule.

C. C.

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Supreme Court of the United States

OCTOBER TERM, 1879.

No. 191. APPEAL.

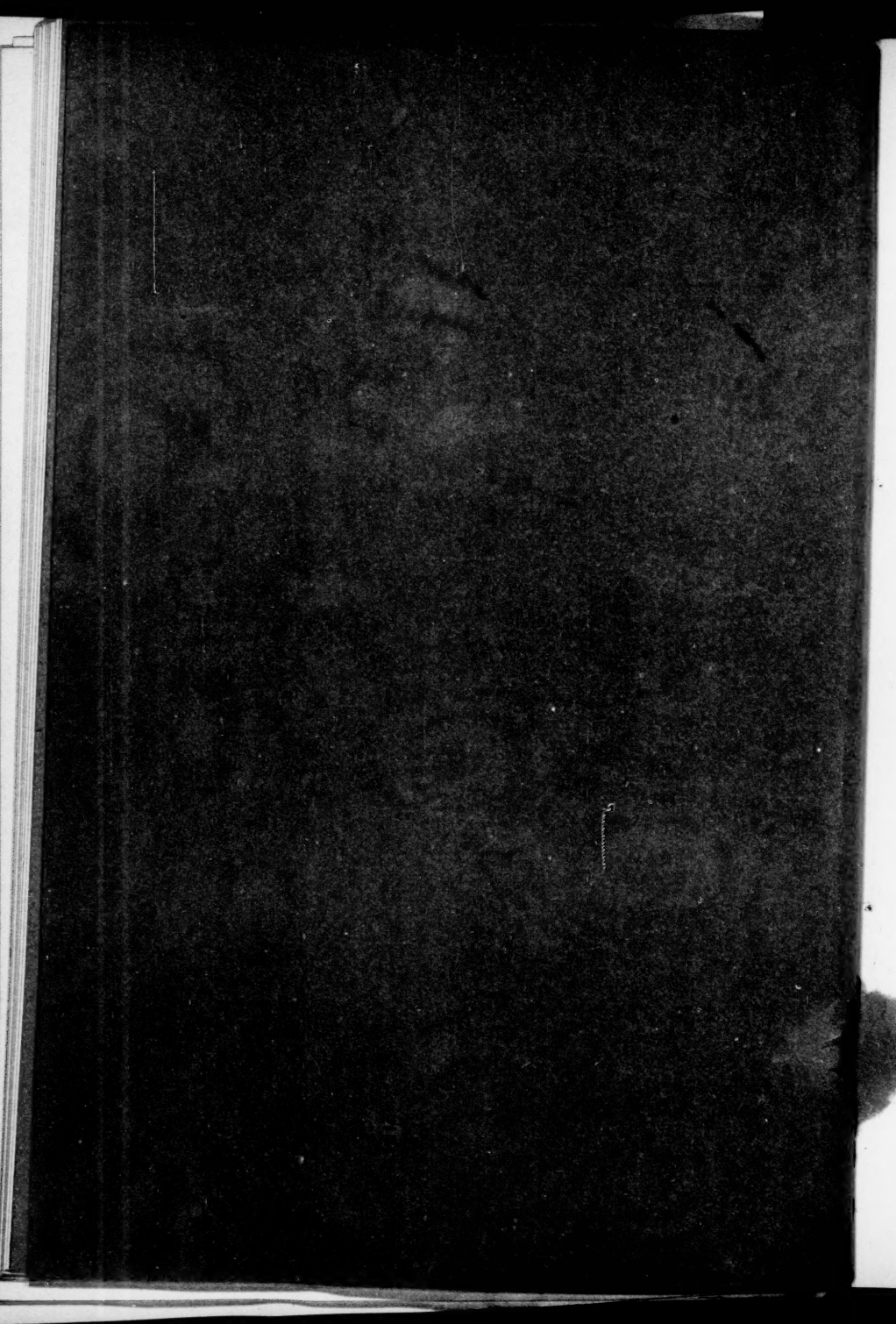
FRANK F. CASE, Receiver of First National Bank of New Orleans,

vs.

NEW ORLEANS & CARROLLTON RAILROAD COMPANY AND OTHERS.

Answer of Complainant's Counsel to the Second Brief of Counsel for Respondents.

Thomas McGill & Co., Law Printers, 1107 E Street Northwest.



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APPEAL.

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Had personal reasons controlled, as perhaps they should have done, counsel for respondents would have been refused (as he might have been) the privilege of replying to the original brief filed on behalf of complainant in this cause. Such consent was given, reserving the right to answer, because refusal might have implied fear of discussion, whereas the writer was entirely confident that any brief the defense could submit would, after even cursory discussion, only more clearly establish the positions originally assumed on behalf of complainant, and betray, beyond equivocation, the weakness—the absolute groundlessness—of the views and theories behind which respondents (saving now Gen. Beauregard) seek to screen themselves from justice. The result fully justifies this confidence, and we now only re-

gret that, as the case stands, we may not ask even a half hour for oral reply; while, if physically able to submit an exhaustive argument in print, we could hardly ask so much of the time of the court as would be necessary to consider it. Therefore brevity must be studied, and yet—considering that so much is at stake, and leaving out of view all consequences to the writer—we do hope the honorable judges will cultivate for the occasion *unusual patience*.

As to the equities of the case, we assert unhesitatingly that the points made by this second brief for the defense can be fully answered.

We shall spend but little time in considering the technical argument submitted in support of the pleas of *res judicata*. That matter may well be disposed of by considering what has been done and decided in the premises. And first, we remark that it has *not* been decided by this court, nor was it decided by the court below, in said cause No. 167, that complainant was not entitled to relief under a bill framed and presented as a creditor's bill, technically so called. Relief was not sought by such a bill in said cause No. 167; but the counsel who filed that bill sought and expected to maintain it upon other and different grounds. It is conceded that, as to many points, the decision in that case was and is conclusive. What is claimed is that, while the court below, in that cause, did decide that the complainant could not have relief upon the grounds then contended for, it was also decided that his only remedy was by a creditor's bill; that the bill then pending was not such a bill, and *for that reason* must be dismissed. This simple statement is sufficient to show that the decision of the lower court in said cause No. 167 cannot be pleaded in bar of a regular creditor's bill; because the court there decided, in effect, that under such a bill, and under such a bill only, the complainant would be entitled to the relief prayed. To this it may be added that the concluding language of this court (99 U. S., 129) in the same case

is, by implication, to the same effect. That language is: "The bank has therefore no specific claim upon the property, nor is there any trust which a court of equity can enforce; and it was well said by the circuit justice that, without some constituted trust or lien, a creditor has only the right to prosecute his claim in the ordinary courts of law, and have it adjudicated *before he can pursue the property of his debtor by a direct proceeding in equity.*" If this language does not mean that if the bank had prosecuted its claim in the ordinary courts of law, and had it there adjudicated, it could then pursue the property of its debtor by a direct proceeding in equity, then we fail to comprehend the meaning of ordinary English words.

Counsel for respondent places much stress upon the fact that the decree of dismissal in said cause No. 167 was general, without any reservation of equities in regard to any possible subsequent suit. In view of what was then said by his honor, Mr. Justice Bradley, it cannot be doubted that if he had been asked to order the dismissal "without prejudice," he would have directed it to be so entered; or if he refused, he would have done so upon the ground that such entry was entirely unimportant; unimportant, because he had decided that under a creditor's bill he could and would, as then advised, have granted the relief prayed; but that he must dismiss the case upon the "*technical*" ground that neither bill nor proofs showed the complainant to be a judgment and execution creditor. In view of what has since transpired, it is perhaps to be regretted that complainant's counsel did not then and there ask that the dismissal of said suit should be "without prejudice." But certainly this court may well suppose that the point did not at the time escape the attention of either the complainant or his counsel, and that the conclusion of *both* was, that such an entry was entirely unessential, because the court had dismissed the cause for want of jurisdiction, stating, in so many words, that "the difficulty of the case consisted

in the fact that the complainant had no judgment or execution, and therefore no standing in court"; and they could not imagine that a decree dismissing a cause because the bill was not, technically speaking, a creditor's bill, could or would be pleaded in bar of one which, in even every technical aspect, was and is of that character.

Respondents' counsel also strongly urges, in support of his pleas, that the equitable relief sought is the same in both bills. This is not denied; but still the question remains, Can a decree rendered in regard to a bill of which, considered as a creditor's bill, the court, upon technical, but absolutely essential grounds, had no jurisdiction, be pleaded in bar of one subsequently filed which complies with every rule of equity necessary to give the court jurisdiction? Take, for illustration, the case of *Smith* v. *The Railroad Company*, (99 U. S., 398,) reported since our original brief was printed, and therefore cited by us in the margin. This court in that case decided that the complainant could have no relief, upon the ground that he had no lien upon the fund he sought to reach; that "his case was therefore a common creditor's bill; nothing more and nothing less." And as the bill showed neither a judgment at law nor execution, it was held that, for this reason only, complainant could not have the relief sought. Now, if, hereafter, Smith, having first recovered judgment at law, and the issuing of execution thereon, should again file a bill asking the very same relief, but this time not upon the ground that he has any lien, but that he is a judgment and execution creditor, and, as such, has exhausted his legal remedy, can it be pretended that the decree of this court or of the court below, in the same cause, could be well pleaded as a bar to the bill thus last filed?

To our minds the very statement of this proposition is the end of argument. It matters not that the equitable relief sought is the same. If, in the first case, the facts showed that complainant had no right to invoke the aid of

equity, while in the latter it was equally apparent that he could properly demand such assistance, it would seem to be little better than nonsensical to insist that his lameness in the first instance should stand in the way of any recovery when all disabilities had been cured.

Counsel for respondents also insists that even a creditor's bill will not entitle the complainant to relief unless he have some independent right or lien upon the property he seeks to follow. That such is his theory is plainly manifest from the language on page 3 of his brief. The cases already cited sufficiently answer this proposition. In 99th U. S., p. 129, as already quoted, the plain meaning of the decision is that the complainant must have relief, if at all, as a judgment and execution creditor, because he has no trust in nor lien upon the property sought to be adjudicated. And in *Smith* v. *Railroad Company*, (99 U. S., p. 400,) Mr. Justice Swayne says, as already quoted: "The complainant has no lien upon the fund he is seeking to reach. His case is therefore a common creditor's bill; nothing more and nothing less."

We have not had time, nor will we delay this argument now, to examine either elementary works or adjudications as to what a plea of *res judicata* should contain. Looking for a moment into Daniell's Chancery Practice, (vol. 2, p. 661,) we find the statement that the plea "should aver that the allegations *as to the title to relief* were the same in the second bill as the first."

We think this is a correct legal proposition, and decisive of the present controversy. For here the title to relief set up in the last bill is that of a judgment and execution creditor. No such title was set up in the first bill, and therefore the decree of dismissal in the first case cannot be pleaded in bar of the bill now pending. But, for want of time, we have chosen to consider this matter upon general principles, and must now leave that branch of the discussion, simply remarking that if the bill now pending does

assert other grounds of relief, as to which the decision in said cause No. 167 was conclusive, it certainly is still good upon the new ground averred, and for the want of which the first bill was held bad. It is to be remembered that when the present bill was filed *this* court had not decided that all the grounds of relief relied upon in the first bill were insufficient, and probably they were reasserted in the present bill because counsel who filed the first still had confidence in them, notwithstanding the decision of the court below.

We discover that this reply must be tedious, but to avoid that, so far as possible, we leave many remarks and some authorities cited unnoticed, and pass to consider what defendant's counsel urge in opposition to the equitable relief claimed. This relief is based upon what we have termed our "leading proposition," as set forth on page 15 of our original brief. If that proposition correctly states the law of Louisiana, there can be no doubt that complainant presents a meritorious case, than which none could be more so. And here we freely confess that unless this court will now inquire into the soundness of that proposition, notwithstanding its own intimation upon the point of last year, there is an end of controversy; and we must submit, with the best grace possible, to an irretrievable injustice.

In addition to reasons orally suggested for the review, we now submit that defendant's counsel, aware of the decisive character of that leading proposition, presents in opposition to it an argument so boldly misleading and fallacious that it alone should induce reconsideration. It is made up, web and woof, of positions not only unwarranted by the code or decisions of Louisiana courts, but in direct conflict with both. Worse still, it is marred by misstatements, both of law and fact, so astounding that we know not how to characterize them. This is strong language, language never before used by the writer in a brief, and that only fidelity to truth and the stern behests of duty can

justify. If not clearly vindicated, we will submit to what will be deserved censure on the part of the court. But we know whereof we speak. Furthermore, we repeat that we do not invoke a revision of any ruling of this court upon a general principle of law in regard to which its decision is and should be conclusive. Even this is sometimes done. Mr. Justice Baldwin, in 11 Peters, 400, says:

"I freely admit that a court may and ought to revise its opinions, when, on solemn and deliberate consideration, they are convinced of their error. This is often done, though never without the fullest investigation."

True, this was a dissenting opinion, but the doctrine is none the less sound. And in 6 Peters, 298, 299, this court discusses the necessity of changing its decisions in order to conform them to State rulings, when such rulings should control its action. In passing, we beg to call special attention to the language of the court upon the pages last cited, as applicable to the case at bar in more than one particular. But here we ask no re-inquiry as to any general principle of law, but, on the contrary, urge merely a reconsideration of what, in a certain sense, is a question of fact, to wit: What was, and is, the law of the State of Louisiana? The finding of this court upon that question will not—cannot—change that law. If the finding is erroneous, it will simply work injustice in the case to which it is applied; while the law of Louisiana will remain unchanged for the protection of all subsequent litigants.

Confident that our request will not be denied, we proceed with the argument, and shall notice, in as few words as may be, some positions assumed in defendant's brief. On page 5 he asserts that "the creditor's *quasi*-lien is derivative and subordinate; that the lien exists in favor of the partners, and can avail the creditor only through the action of a partner. If the partner waives it, it is gone." Again, on the same page, he adds: "The lien is gone

when the property ceases to belong to the partnership, and it is competent to convey it away to the prejudice of the creditors." His conclusion from these general principles, and from the fact that in the case at bar the partners had assumed to convey the partnership property, is, that "no lien could be enforced under these circumstances." As to these positions, it is conceded that they are correct wherever the common-law rule prevails; and the attention of the court is specially called to the fact that, although he cites numerous authorities, they are *all* from common-law text-writers or from the decisions of common-law courts. Not a reference to the Louisiana code nor to a decision of a Louisiana court in the entire list! And here and now we assert, without fear of successful contradiction, that neither in said code nor in the decisions of any court of Louisiana can he find one solitary word in support of either one of the legal propositions we have quoted. On the contrary, his assertion that it is competent for partners in Louisiana (by which we mean more especially ordinary partners) to convey away the partnership assets to the prejudice of the creditors, is in the teeth of the leading decisions of the courts of that State from the earliest period.

We repeat, we have no controversy as to what are the rules of the common law. Under that law the lien of the creditor is subject to the will or caprice of the partner, and, therefore, if the partner conveys the assets, he thereby signifies that he does not wish partnership creditors to be preferred, and their rights are gone. These propositions the writer has never disputed, and it was unnecessary to cite a single authority in support of them. If, instead of the long list of the character indicated, he had quoted a single word from the code or Louisiana courts to sustain him, then would he have given us something to answer. He did not, and *cannot do so.*

Again, on page 6, it is said, "The Louisiana code does not treat of the supposed partnership lien under the head

of *privileges*, properly speaking." This is very true. Under that head the code defines what a privilege is, and in article 3185 prescribes that "privilege can be claimed only for those debts to which it is expressly granted in *this code*." Thus by its terms leaving it to other and proper parts of the code to define and prescribe when a privilege shall exist.*

Again, he says, "Nor is the supposed lien of the partnership creditor to be found in the exhaustive analysis of all privileges known to the Louisiana law in Mr. Hennen's digest." This statement means that because Mr. Hennen had not thus included it in his analysis, therefore his opinion was that the code conferred no privilege upon such creditors. But can this court believe that counsel for defendant was ignorant of the fact that Mr. Hennen, under the proper head of partnership, not only recognizes the fact that the code *does* confer such a privilege, but makes it the subject of a distinct subdivision, and by the title calls it the "*Privilege* of Partnership Creditors on the Property of Partners." (2 *Hennen*, 1150, TITLE VI.)

It is true, that in that title he also speaks of the privilege of individual creditors; but that was because, under a former code, (prior to 1825,) referred to in several of the cases originally cited, individual creditors were also given a privilege as against partnership creditors upon the private property of the partners. (See 8 New Series, 606, and 3 Ann., 189.)

Our original brief gives our construction of article 2823

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* In a case hereafter to be noticed (*Morgan* v. *Creditors*) the Supreme Court of Louisiana quote this very article 3185, (then numbered 3152,) in connection with said article 2823, (then numbered 2794,) to prove that while the latter *did* grant a privilege to partnership creditors upon the firm assets, it did not give individual creditors any privilege upon individual property. Could judicial language more plainly construe the words "*in preference*" in said article 2823 as creating a privilege?

of the Civil Code. It need not be repeated. Is it necessary to argue that if a judicial sale of partnership assets cannot defeat the preference of partnership creditors, such preference may not be defeated by the acts of the partners themselves, they selling to a purchaser having full notice? And yet defendant's counsel insist that said article only applies to "property not alienated by the firm." How can alienation by the firm have greater effect than alienation by order of court? We speak more particularly of alienations by ordinary partners, rather than of sales as sometimes made by members of a commercial firm; and this distinction must be borne in mind throughout the entire discussion. A commercial firm buys property *for the purpose of selling it*, and therefore, as to such a firm, under some circumstances, a different rule may be just; although, as the decisions show, the code gives to the creditors of commercial partners a privilege on the firm assets. It is also insisted (pp. 6, 7) that said article 2823 is only applicable to partnership property "over which the court is seized of jurisdiction, whether by seizure or otherwise." Or, as stated in another place, (page 7,) it "announces a rule to be observed in dealing with partnership property over which the court has acquired jurisdiction, and in adjusting the claims to the property preferred by individual and firm creditors."

As to these propositions, we say that it *is* a rule for the cases supposed; but it is also a rule *for all other cases* involving the rights of partnership creditors; and to say that it is limited to cases where the court has already acquired jurisdiction of the partnership assets, is to say what is not warranted by the language of the article, nor by a single adjudication of the State of Louisiana. On the contrary, very many of the cases—all the leading ones—by us cited were cases in which the court had acquired no such jurisdiction. Besides, as we have already stated, the code no longer confers any preference upon individual

creditors. And of this counsel for defendant must have been aware, for he cites the very case (8 N. S., 606) in which that point is adjudicated and settled.

In this connection we come to a misstatement so significant that we invite particular attention to it. On page 8 of his brief defendant's counsel says: "It is not at all inconsistent with the view of the limited scope of article 2823, (the view before noticed,) that the partner should be made liable for partnership property at the suit of the syndic of *his copartner*, whose rights were vested in the syndic, which was the case of *Perry, syndic*, v. *Holloway*, 6 La. Rep., cited by the appellant." Thus it will be seen that, in order to break the force of this leading and conclusive decision, counsel for defendant assumes that the suit was one by the syndic or receiver of one partner *against his copartner*. And unless this view is sustained by the facts, the case, as we asserted in our original brief, is so conclusive against him as to be decisive of this controversy. But the facts are totally perverted. The suit was not of that character. It was against Holloway. Perry was the syndic or receiver of one Powell, and the other member of the copartnership was Harris. *Holloway had never been a member, or even an agent of the firm*, nor in any mode or manner connected with it. As we have stated in our original brief, Holloway bought, at sheriff's sale, the interest of Powell in the firm; and subsequently, by private arrangement, he bought also the interest of Harris, the other partner. Of course he knew he was buying partnership assets. He also had notice of partnership liabilities unpaid; and it was because of these facts, and not because he had ever been a partner, that the court said: "By buying out the interest of the partners and receiving all the assets, Holloway became himself the debtor of the creditors of Harris & Co., at least to the extent of these assets."

Thus do we show a most material fact misrepresented, in order to adapt the case to theories that have no existence

in Louisiana law outside the imagination of counsel. Does this statement go too far? Consider briefly how this one case, truly stated, overturns all the views of defendant's counsel, before mentioned, and sustains our theory of the case at bar. It was *not* a case of distribution; not one where the court, by seizure or otherwise, had acquired jurisdiction of the assets; not one where assets had not been transferred but still remained in the hands of the firm, or even of one partner. It was not one where it was possible to trace and identify a single item of the assets, for the purpose of specifically enforcing upon it the creditor's lien. It may be doubted whether, when the suit was brought, a single item of the assets remained in the hands of the assignee. Certainly all had long prior to that time passed from the control of the partners. Nor was it a case where a partner had directed the partnership assets to be applied in payment of partnership debts. No such direction was pretended. Thus, by the ruling of this one case, all the above-named vagaries of defendant's counsel are swept to the winds. In point of fact, the partnership debts in question had been paid by Holloway before the suit was brought, such suit being on account of alleged private indebtedness of Holloway to Powell; and the question was whether, upon such indebtedness, he should be credited for the partnership debts thus paid. It was as to this the court said, in effect: "Mr. Holloway, you cannot have such credit; you bought the entire partnership effects, and thereby, to the extent of their value, you became the debtor of the partnership creditors, and bound to pay such debts." Thus showing the rule, as we claim it to be, of universal application, controlling not only as to cases of distribution, but in all cases where the rights of partnership creditors are involved.

On re-examination we find the facts slightly different from our first statement of them, but such difference is in our favor and not against us. It will be noted, too, that

the partnership in this case involved was a *commercial* one, thus showing that even as to the creditors of such a firm the privilege is also secured; although as to partnerships of this character we can conceive of a transfer under such circumstances as would probably protect the purchaser from liability. But the circumstances would be such as not to affect our present argument. We said in our first brief that unless this case of *Perry* v. *Holloway* could be shaken, it fully sustained our leading proposition, and entitled us to the relief asked. We stand by that assertion, and may well do so, in view of the fact that defendant's counsel does not attempt to shake, but only to pervert, the facts in the case.

But the doctrine in this case is simply that of all the Louisiana decisions, as to the rights of partnership creditors. And this, too, whether the partnership was a commercial or an ordinary one. As to this, we speak advisedly; for we believe we have examined every case to be found in all the Louisiana Reports involving the question. Their number is legion, and we have cited, in our first argument, only a few of the briefest and clearest. Are they not decisive? Omitting names, consider briefly the language of the court in these different cases. In 8 *N. S.*, 606, the court say: "They [the Legislature] have given a privilege to partnership creditors on the partnership estate." Is there here any intimation that the privilege is dependent upon the will of a partner or upon any of the conditions suggested by defendant's counsel? In 3 *Ann.*, 319, it is said: "The partnership assets are a trust fund for the partnership creditors." For whom? Answer: the partnership creditors. For them directly, and not upon the condition that it shall be so ordered by one of the partners. In 17 *Ann.*, 75, we are told: "The partnership property is the common pledge of the partnership creditors, who must be paid out of it." In 12 *Ann.*, 698, the court quotes article 2823, and

then says: "Here the privilege is given to the creditors by express law."

Again, we ask, to whom is it given? Answer: to the partnership creditors. What is it that is given to them? Answer: a privilege. The citation from 9 *Rob.*, 425, cannot well be abbreviated, but it is as strong as the case of *Powell* v. *Holloway*, and contains some views which must hereafter be noticed. In effect, it likens the purchaser of partnership assets with notice to a second mortgagee, (third possessor,) who must yield the mortgaged property or pay the first-mortgage debt. In 12 *La.*, 371, the court speaks of the rights of firm creditors to its effects. Not an intimation that such rights are limited or contingent in any respect. Other cases could have been cited, and as our views are disputed, we will refer the court to one additional authority, to wit, *U. S.* v. *Boulers*, 5 *Martin's N. S.*, 568, in which the court say: "The property of a partnership remains a common fund for partnership creditors, and they must be preferred even over a claim of the United States." But says defendant's counsel, "The interpretation of article 2823 is found in the following cases"; and he cites 8 *N. S.*, 599; 12 *Ann.*, 279, (which should be 13 *La.*, 279;) 2 *Ann.*, 87, and 3 *Ann.*, 187. To this statement we respond a hearty amen. Several of these were cases of distribution. One of them is cited by us in our first brief, and as to all of them we may state, generally, that they unequivocally prescribe the rule as to the rights of partnership creditors as we assert it; and in not one of them is there an intimation of any such limitations or conditions as are insisted upon by counsel for defendant. *Morgan* v. *His Creditors* will be noticed hereafter. In *Claiborne* v. *His Creditors* the court decided that "Owners of a steamboat were commercial partners, and that therefore the partnership assets belonged first to the partnership creditors, and no part of them could be applied upon individual debts until partnership debts were all satisfied." In *Gridley* v.

Connor one partner sought to compel his copartner to pay back partnership funds by him collected; and the court, recognizing the rule that such funds must first be applied to the extinction of partnership debts, ordered the refunding, subject to that right. The case of *Flower* v. *His Creditors* simply indorses the case of *Morgan* v. *His Creditors*, in 8 *N. S.*, which will shortly be noticed.

We come now to consider the most extraordinary position, apparently, assumed by counsel for defense, in which, on page 8, something is said of the *lex mercatoria* and commercial law, and in which he says: "If any article of the code appears to conflict with the general commercial law, the presumption will be in favor of the rule of the commercial law." Several cases are cited, which may be dismissed with the remark, first, that they all have reference to questions regarding notes, bills of exchange, or the liabilities of insurance companies. Not one of them as now remembered involved, in any particular, the rights of partnership creditors, or the privilege of such creditors upon partnership assets. Second. It may be noted that they are all cases which were decided when another and quite different code from the present one prevailed in the State of Louisiana, and when, in accordance with commercial law, the courts did hold that while the code gave partnership creditors a privilege upon partnership assets, individual creditors should also have a like privilege as against partnership creditors upon the individual property. But even *this* was abolished by the code of 1825, and this whole matter of the application of commercial law to the question involved in this case is disposed of by the above-noted case of *Morgan* v. *His Creditors*, cited by us in our first brief, but which we ask the court here and now further to consider. In this last case the question was whether, notwithstanding the new code of 1825, individual creditors could still have a preference or privilege upon the individual property of

partners, to the exclusion of partnership creditors. And the court say:

"The new code expressly recognizes the right of partnership creditors to be paid out of the partnership estate, by preference to the private or separate creditors; but article 2794 (now 2823) also provides that a privilege can be claimed only for those debts to which it is expressly granted by the code."

Thus, by using the very language of the present code as to when a privilege is created, it is shown that the court here regarded the words "by preference" as creating such a privilege in favor of partnership creditors. Otherwise, said quotation as to privilege could have no pertinence in connection with said article 2823. And this more conclusively appears by what follows, for the court proceeds to say: "Perhaps we might deduce, as a corollary from the principle recognized in article 2823, that as partnership creditors exclude separate ones from the partnership estate, the latter must exclude the former from the separate property. But this would be a distinction by implication, and the article (3152, now 3185) rejects every privilege not expressly recognized by the code." How could the court use language more clearly declaring its opinion, that the words "by preference" did create a privilege in favor of partnership creditors? What application could article 3185 possibly have, and why should it be referred to in such a connection upon any other theory? But it is after stating what has already been quoted, that the court say, as cited in our first brief: "But they [the Legislature] have acted upon the subject; they have given the privilege to creditors of a partnership on the partnership estate; have, by a general clause, abolished the privilege of separate creditors of a partner on his separate estate. It is our duty to conclude *that the Legislature has acted on the whole subject in the civil code, and left nothing in this particular to be regulated by the commercial law.*" Is it possible that counsel for defense was ignorant

of this language of the court, in one of the very cases by him cited, and which he says gives the interpretation of article 2823? And if not ignorant, in view of the fact that upon this very question the court there declared that the Legislature had left nothing to be regulated by commercial law, how can he have the boldness to ask this court to refer to commercial law for the settlement of any question here involved? Furthermore, we must think him familiar with the case of *Smith* v. *McMicken*, 3 *Ann.*, 319, cited in our brief, in which the court say that "it will not do to look to courts of common-law jurisdiction to determine what construction shall be given to the partnership law of Louisiana;" and expressly state that such authorities cannot be followed without breaking down their own jurisprudence!

In view of these adjudications, it is difficult to treat seriously this attempt to invoke the *lex mercatoria* or commercial law to fix the meaning of an article of the Louisiana code, which, in precisely its present form, has been in force for fifty-five years, which, during that period, has received judicial construction scores of times, and always to the same effect. If some less experienced counsellor should propose such an idea before the Louisiana court of last resort, it is easy to imagine venerable judges would either smile at the verdancy or frown at the assurance displayed.

We come now to the last position assumed by defendant's counsel, as found on page 9 of his brief. Here, again, duty is painful, because the language as it stands is misleading beyond any imaginable excuse. To be exactly just, we quote his precise words, as follows: "Moreover, the real estate which the bill seeks to reach could *not* become the property of the commercial partnership either by the commercial law or by the law of Louisiana. It has been held

that the firm creditor can have no preference at all upon real estate."

In support of this proposition counsel cites three decisions, namely, 3 La., 497; 17 La., 596, and 1 Ann., 432. Stated in the fewest words possible, the plain assertion of this proposition is that, even if complainant may have a privilege as to some of the partnership assets, it does not cover the land, because the code gives firm creditors no preference at all upon real estate. If this is not a fair statement of its meaning, it has no practical application to the case at bar. Now, what are the facts and the law? The leading fact is that the partnership involved in this case was an ordinary and not a commercial one. This was so held in the case at law, both in the court below and by this court. (See 91 U. S., 134.) It cannot be controverted. Now, if there is one legal proposition better settled in Louisiana than any and all others, so well settled that the merest tyro in legal knowledge should be familiar with it, it is this, namely, that commercial partners cannot own real estate, but ordinary partners can. Hence it follows, and as to this the law is no more doubtful, that real estate can be an asset of ordinary partners upon which creditors can and do have a preference, as upon all the assets; while creditors of a commercial firm can have no such preference, because such a firm cannot own real estate. The very cases cited by defendant's counsel, so far as applicable at all, instead of sustaining what he would have this court infer, confirm our statement of the law as above, as will be presently shown. But, first, it must be premised that in Louisiana the division of property is into "movables" and "immovables," the former standing for personal and the latter for real estate. Furthermore, under the old law, a slave was, like land, an "immovable." We can now understand the cases cited. The first one (3 *La.*, 494–7,) has but little application. The validity of the sale of a slave was in litigation; and while the case, from first to last rec-

ognizes the privilege given to partnership creditors by the code, it was held that commercial partners, *as such*, could not hold a slave because it was an "immovable"; but that if they bought one they became owners as joint tenants, as in the case of land. The case in 17 *La.*, 599, is really in our favor; for the court, after citing the code as to commercial partners, to show that such partners cannot hold land, decide that for this reason, and for this reason only, the creditors could have no privilege. In 1 *Ann.*, 432, there was no question of privilege involved. Two commercial partners had bought a slave. One partner sold him with the implied assent of the other, the proceeds of the sale going to the benefit of the firm; and the point was as to the validity of this sale. The court held that such partnership was a commercial one, and as the slave was an "immovable," the partners held as joint tenants; but inasmuch as the other partner assented to the firm receiving the benefit of the sale, it was held valid. Thus much for the cases cited by defendant's counsel. They do hold that commercial partners, *as such*, cannot own real estate; and as a corollary it follows that creditors of such a firm can have no privilege upon what the firm cannot own. But none of these cases hold any such doctrine as he would have inferred from them in regard to ordinary partners. But by implication, at least, (and as we now remember in regard to one of them, directly) they decide the reverse. We need not, however, rely upon inference. The Louisiana Reports abound in cases showing that land, as well as personal property, may be an asset of an ordinary partnership; the case of *Priestly* v. *Bisland*, 9 *Rob.*, 425, being only one of them. We cited this case in our first brief as being as conclusive as *Perry* v. *Holloway*, and also as proving that although ordinary partners were only liable when sued each for his virile share, yet the entire assets of such a firm are subject to the privilege of the partnership creditors. We now cite it to prove that land may be one of such assets; and it

is enough to say that the judge begins his opinion by stating that "the claim is against the defendants as ordinary partners in the *ownership* and cultivation of a plantation in the parish of Terre Bonne." We hope honorable judges will find time for the careful perusal of this last case. We could extend this argument by citing many other decisions, but will not do so.

In view of the foregoing statement of law and facts, with all due charity, we ask, what could be more misleading than this last proposition of defendant's counsel? And if the purpose was not to mislead, why was anything said as to privilege upon land? Above all, why was the proposition so worded as to ignore the difference in that regard between ordinary and commercial partnerships? As appiled to commercial partnerships, it is true that "the firm creditor can have no preference at all upon real estate." As applied to ordinary partnerships, the proposition is absolutely false. Does a good cause seek shelter behind such evasions and misrepresentations?

In order to remove any possible suspicion of negligence, we crave leave to refer to a single matter not strictly in answer to defendant's brief. When No. 167 was argued, it was intimated that the receiver, at the proper time, might, and perhaps should, have settled this Beauregard & Co. indebtedness by applying it in "compensation" (as set-off) upon the check by May issued and delivered to the United States.

The answer is simple. When the receiver took possession, May was liable to the bank upon other items of indebtedness to an amount aggregating more than the balance due upon said check.

It was, therefore, the plain duty of the receiver thus to arrange such other indebtedness and enforce collection of the railroad debt against the partnership assets. These facts can be demonstrated from the evidence in the present record, but the details would be tedious.

Here reluctantly we close the argument. Counsel for respondents cited numerous authorities, but gave not even the syllabus of a single decision; thus compelling us to go into details in this regard to such extent that we dare not further draw upon the patience of the court. Some of its members know that we are not naturally over-confident as to legal positions propounded. We are sensible, too, of the heavy pressure of personal interest here and now. But, striving to make due allowance for that, it does seem to us that for once we may feel sure as to our views.

We do think it has been shown that neither by the ruling of the court below nor of this tribunal are we estopped from prosecuting a creditor's bill. In both courts that right was saved; while, as regards the relief invoked, surely it has been demonstrated that, by the law of Louisiana, complainant, as sole judgment and execution creditor of the partnership involved, may hold the respondents, as purchasers with notice of the partnership assets, "at least" (to use the language of one of the cases) "to the extent of the value of such assets."

We earnestly invoke the most searching examination of authorities that time will permit; and if, in this case, we thus invite honorable judges to an unusual labor, we urge in extenuation the deliberate, religious conviction that such examination will convince them, as it has us, that the law sanctions and commands that for which sheer justice so earnestly pleads.

CHAS. CASE,
Of Counsel for Complainants.

OFFICE SUPREME COURT U. S.
FILED
FEB 10 1880

U. S. SUPREME COURT.

No. 191.

FRANK F. CASE, RECEIVER,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY.

Brief for Defendants.

The complainant's bill (printed record, p. 1), sets forth the same cause of action as was presented in his bill (Record p. 105), filed in his previous suit against the same parties, finally adjudged against him both in the Circuit Court and by this Court, on appeal at the last term, reported in 99th U. S., p. 119. The identity of the matters put at issue, in both suits, is plainly exhibited by contrasting the petitions in each.

In the present suit there is added the unimportant allegation that suits, at law, had been prosecuted to judgment and execution against the debtors Beauregard and May, and that Graham, another debtor, was insolvent and out of the reach of process. Becord pp. 3, 4, 5.

But both suits are substantially for the same matters. Both suits seek to charge the Carrolton Railroad Company, for the debt due the First National Bank, by the partnership of May Graham and Bauregard. The grounds of complainant's action in effect are, that the Bank had a lien upon the partnership property for the partnership debt, that the Carrollton Railroad Company acquired the partnership property with notice of the alleged lien, and the further ground is exhibited that the money of the Bank was misapplied, and the partnership property, into which the Bank's money was converted, is alleged to be charged with a trust in favor of the Bank. The grounds of action urged by the Complainant were fully ex-

amined and adjudged against him in the previous suit, his bill being dismissed. That decree was affirmed by this Court, after the fullest examination.

See decree of Circuit Court, printed Record p. 255.

Decision of this Court, 99th U. S. p. 119.

When therefore this suit was brought, the plea of *res judicata* was pleaded, based upon the decree in the previous suit. Manifestly, the plea was properly sustained. It was a decree on the merits dismissing the bill, without any reservation, and in that form was affirmed by this Court. The decree closed the litigation, and left nothing open.

See pleas, printed Record, pp. 52, 57.

Story's Equity Pleadings, § 793.

Second Story's Equity Jurisprudence, § 1523.

Durant vs. Essex Co., 108.

The complainant's theory in bringing this, his second suit, was that he was entitled to reopen the litigation, because after the first decree, he had prosecuted to judgment and execution, his debtors, May, Graham and Beauregard. But wholly irrespective of that, he was adjudged to have no claim against the Carrollton Railroad Company, or its property. The prosecution of his suit at law against the partnership, did not add in any respect to pretensions finally adjudged to be without merit. *Interest reipublicæ ut sit finis litium.*

Nor is the effect of the decree dismissing a bill, to be avoided by bringing forward alleged fresh causes of action, tending to the same result; whatever causes exist when the suit is brought, must be presented. The suitor cannot protract a litigation, and bring as many suits to obtain the same relief, as he fancies he has causes of complaint. But the previous opinion and decree reviewed and determined all substantial grounds, against the complainant.

The defendant, referring to the opinions and decrees, in the previous case, and to the decree in this case, maintaining the pleas and dismissing complainant's bill, respectfully asks that the decree appealed from (Rec. p. 266), be affirmed.

HENRY C. MILLER,

Solicitor for Complainant.

MAR 30 1904

U. S. SUPREME COURT.

No. 191.

FRANK F. CASE, RECEIVER,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY ET ALS.

Brief for the Defendants, Appellees.

HENRY C. MILLER,
Solicitor for Defendant.

L. GRAHAM, BRIEF PRINTER, 127 GRAVIER ST.

U. S. SUPREME COURT.

No. 191.

FRANK F. CASE, RECEIVER,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY ET ALS.

Brief for the Defendants, Appellees.

There was a former suit between these parties, involving the issues presented here. The decree in the former suit dismissed the complainant's bill, without any reservation. It was a decree not expressed to be, without prejudice. It was made after hearing and judicial examination. (See opinion and decree, Record pp. 255, 256, 257. See affirmance of that decree by this Court, 99th U. S. 119.)

But after that decree was rendered in the Circuit Court, the Complainant conceived he could renew the litigation, if he first recovered judgment at law against his debtors, May, Graham and Beauregard—issue execution and have it returned *nulla bona*. This he did, except with reference to Graham, who was out of the jurisdiction. See Record, p. 3. Thereupon the Complainant filed his present bill, to which the defendants pleaded in bar the decree against the complainant in the former suit. See decree on which pleas are founded, pp. 255, 257. See pleas, Record pp. 55, 52. These pleas were sustained by the decree in this case, and from that decree this appeal is taken. Record pp. 266.

The present bill is the same, as that exhibited in the former suit, except to this bill is added, the allegation that judgment

at law had been recovered against May and Beauregard, and that execution on that judgment had been returned unsatisfied. (See bill in former suit, Record p. 75, present bill Record pp. 1 to 9.) The allegation of the judgment and execution against his debtors, May and Beauregard, does not sensibly distinguish the present bill from the former. The Complainant's case was adjudged in the former suit to be without merit, irrespective of any future suit at law against his debtors—with which addition to his present bill, the appellant seeks to renew the litigation. His first bill, like his present bill, relied for relief upon the supposed lien upon the property of the New Orleans and Carrollton Railroad Company, which lien was claimed on behalf of the Bank, of which the complainant is Receiver, the Bank having been a creditor of the partnership of May, Graham and Beauregard, and it was alleged that this lien followed the partnership property, although the property had been alienated and acquired by the Company, for the valuable consideration shown by the Record (see pp. 75, 73, 80); then there was in the former as in the present bill the development of another supposed ground, *i. e.*, that the property of the partnership property was affected with a trust in favor of the Bank, because purchased as it was alleged, with the Bank'sfunds, charged to have been fraudulently misapplied by the President of the Bank. (Record pp. 78, 79.) And the position assumed in the previous litigation, that the Company had bound itself for the debt, is repeated in the present bill, although the stipulations in this respect, in the act of fusion manifestly has no reference to the demand of the Receiver; that being treated in the conveyances from the United States, as the demand against May individually, against which the United States furnished its stipulation of indemnity, but requiring its vendees to assume other debts, recognized as due for account of the road, and the so-called assumption in the act of fusion, has obviously, the same limited scope. See Record, pp. 27, 31, 37, 39.

The former bill, thus substantially blending all the causes of complaint, has been twice acted upon and dismissed without

reservation or qualification. What remains but acquiescence? There is nothing in the exhaustive opinions in the former suit of his honor, Justice Bradley, and of this Court reported in 99th U. S., p. 119, that lends the faintest countenance to the idea, that with a judgment at law and unsatisfied execution thereon against his debtors May and Beauregard, the Complainant can maintain this suit. Such judgment and execution, aids the creditor when he has an independent right upon the property he seeks to follow. But here it has been adjudged after the most careful investigation, that the Complainant has no right or title whatever to or upon that property, which he seeks to make liable in the hands of the N. O. and Carrollton R. R. Company. His supposed lien as a partnership creditor, has been adjudged to have no existence; the asserted trust upon the property arising from the alleged misuse of the partnership funds completely disappears under the test of judicial investigation; is abandoned in appellant's brief; and the decree acting upon the entire bill dismisses it, in the terms employed, to close further controversy. In the light of these opinions and decrees in the former suit, the appellant is destitute of right or semblance of right to the relief he seeks, not because of some element in his case, that was wanting before and which he could supply, but because of the original and inherent defect, or, rather want of basis for his pretensions. When the appellant supposes that his previous litigation failed, owing to the want of that judgment and execution which he now supplies, he mistakes the causes of his discomfiture. These causes are furnished in the opinions rendered, and they are manifestly beyond the cure of that feeble auxilliary, *i. e.*, the judgment at law followed by an execution, which the appellant brings to his support in his present bill. The decisions are exhaustive of the controversy. The opinion and decree of this Court affirmed that of the Circuit Court, which "dismissed the bill with costs," and both opinions are referred to." 2 Wood, p. 99th U. S., p. 119.

Whenever the complainant's case exhibits any equity, which a new bill can develop, the right to file the new blll is reserved.

No such right is reserved in the decree. If the mere re-

covery of the judgment at law, followed by an execution, would have entitled the complainant to renew the litigation, the Court, it is to be presumed, would have reserved the right. Or if error in that respect had been committed, by the Circuit Court, this Court, on the appeal, would have corrected the error. But in the full argument in the previous appeal, no such correction was made, but the decree, as rendered, was ordered to stand (99 U. S., p. 119). The present appeal was pending in this Court, when the appeal in the former case was argued here. The right to file a new bill is always reserved whenever any useful purpose can be subserved by fresh litigation. (See Durant vs. Essex Co., 7th Wallace, p. 108; Bank vs. Carrollton Railroad, 4th Wallace, p. 237.) But it is apparent from the opinions in the former case, that there was no reason whatever for the reservation, either in the appreciation of the Circuit Court or of this Court. The decree was absolute against complainant, at once and forever. Story's Equity Pleadings, § 793, § 791. And now the predicament of the complainant is, that with a final decree against him in the previous suit, in terms that forever closes the litigation, preceded by judicial opinions that strip his pretensions of all support, he is asking this Court to be permitted to re-argue the questions finally adjudicated.

The form of the decree pleaded in bar precludes all the discussion in which he wishes to embark anew. It would be to destroy the effect always attributed to decrees of the character pleaded in bar, to indulge the complainant with renewed controversy. A decree dismissing the bill after hearing, not expressed to be without prejudice or terms of equivalent import, closes the controversy. The form of the decree marks its finality. "The decree dismissing the bill being "absolute in its terms, was an adjudication of the merits "of the controversy, and constitutes a bar to any fur- "ther litigation between the same parties.—Where words "of qualification, such as "without prejudice" or terms "indicating the right to take further proceedings do "not accompany the decree, it is presumed to be ren- "dered on the merits" (7th Wallace, p. 109). The presump-

tion is made conclusive here, by an examination of the opinions. The complainant cannot struggle with any effect against such a decree. Nor can he evade the effect of that decree, by putting in his new bill, the unimportant matter which had it been in his previous bill, it is certain, in the light of the opinions pronounced would not have varied or averted the previous adjudication dismissing his bill. And whether it would or would not, does not lessen the binding effect of that decree which closes the door of contention on the complainant, with respect to his supposed causes of complaint. He has had his day in Court, and his pretensions have been finally disposed of. *Interest reipublicae ut sit finis litium.*

In view of the finality of the decree in the previous suit, the appellee does not esteem it to be necessary to follow at length the complainant in his renewed argument in reference to the supposed lien which he conceives, notwithstanding the judicial opinions to the contrary, existed in favor of the Bank, after the property ceased to belong to the partnership.

The creditor's quasi lien is derivative and subordinate. The lien exists in favor of the partners, and can avail the Creditor only through the action of the partner.' If the partner waives it, it is gone. In this case, two of the partners concur in the conveyance of the partnership property. The third does not assert the lien, but executes a conveyance of his own interest. (See Record pp. 36, 44, 43.) (Opinion of this Court, 99th U. S. p. 119.) The quasi lien in favor of the creditor, derived as it must be from the assertion of the right of the partner in this case has no existence here because the partners, from whom alone it can be derived, have waived it. See Story on Partnership, § 97, 358, 326.; Appeal of York County Bank, 32 Penn. State, p. 446; 99th United States, p. 125.

The lien is gone when the property ceases to belong to the partnership, and it is competent to convey it away to

the prejudice of the creditors. When the decree of the Circuit Court was made in 1871, the Court did not have under its control, for administration or disposition, the effects of the firm of Beauregard, May & Graham, or any property to which they had any claim. The Court did not have before it the persons composing that partnership; Graham is not a party to this suit. Nor did the Circuit Court at the time the bill was filed or pending the suit have the partners or the partnership effects under administration and control. The partnership was dissolved in the month of May, 1867. With the consent of every member of the firm within the same year, the lease that formed the substratum of the partnership was surrendered and cancelled and all the property of the partnership transferred to other parties in legal modes and for adequate considerations. No lien could be enforced under these circumstances.

McNutt vs. Strayham, 39 Penn., 269.
Backus vs. Murphy, 39 Penn., 397.
Skillman vs. Purnell. 3 La., 494.
Ketchum vs. Durkee, 1 Barb. Ch. Rep., 480.
Reese vs. Bradford, 13 Ala. R., 837.
Lallande vs. McRae, 16 Ann., 193.
Parsons on Part., 503.
Sage vs. Challon, 21 Barb., 596.
3 Kent's Comm., side page 65. 12th edition.
Young vs. Painter, 3d Met., 459.
Ely vs. Hair, 16 B. Mon., 237.
Baker's Appeal, 21 Pa. State, 823.

The Louisiana Code does not treat of the supposed partnership lien under the head of privileges, properly speaking. See Civil Code, Article 2823. See "Of Privileges," Civil Code, Articles 3186 et seq., under which the asserted lien of the partnership creditor is not found. Nor is the supposed lien of the partnership creditor, to be found in the exhaustive analysis of all privileges known to the Louisiana law in Mr. Hennen's Digest See 2nd Hennen's Digest, of Louisiana decisions p. 1237.

The article 2823 announces a mere preference, which the Court will observe, whenever called upon to regulate rights to

partnership property, over which the Court is seized of jurisdiction, whether by seizure or otherwise; that is, it is a rule of distribution to be followed so long as the property continues to be the property of the partnership, and is subject to conflicting claims. The article declares, the "partnership property is liable to the creditors of the partnership, in preference to those of the individual partner, but the share of the individual partner may be seized and sold to satisfy his individual creditors, subject to the debts of the partnership, but such seizure, if legal, operates as a dissolution of the partnership." The article from first to last, contemplates the case of firm property; that is, property not alienated by the firm, and it lays down the principle to be observed in its distribution among contending claimants. When the Code comes to define the privilege it uses different language: "It is *a right* which the nature of a "debt *gives the creditor* and which *entitles him to* "be preferred before other creditors, even those who have mortgages." Civil Code article 3186; 2nd Hennen's Digest of La. Decisions, p. 1283. It is manifest the complainant never had any such right.

The Louisiana decisions are in harmony with the view, that the article 2823 of the Code, announces a rule to be observed in dealing with partnership property, over which the Court has acquired jurisdiction, and in adjusting the claims to the property preferred by individual and firm creditors. Thus, the rule is enforced in favor of the joint and to the exclusion of the individual creditors, whenever the firm property is controlled by the Court, as in cases of insolvency: or in the distribution of succession property by the Probate Court: or when by some similar mode the jurisdiction over the partnership property and its distribution, has become vested. The decisions from which the appellant claims to deduce a greater effect for the supposed lien in favor of the partnership creditor, do not afford him the requisite support. They are to be construed in connection with the article of the Code, on which they are founded, and they do not go beyond the scope of that article, which it is manifest does not

confer a right on the partnership creditor which he can enforce in his own independent right, like the privileged creditor under article 3186. It is not at all inconsistent, with the view of the limited scope of article 2823, that the partner should be made liable for partnership property, at the suit of the Syndic of his co-partner, whose rights were vested in the Syndic, which was the case of Perry, Syndic, vs. Holloway, 6th Louisiana Annual Reports, cited by the appellant, the sequel of the decisions in 10th Robinson's Louisiana Reports, p. 111.

The interpretation of article 2823 is found in the following cases:

Morgan vs. His Creditors, 8th Martin's new series Louisiana Rep., p. 599.

Claiborne vs. His Creditors, 12th La. Annual Reports, p. 279.

Gridley vs. Connor, 2d Louisiana Annual Reports, p. 87.

Flower vs. His Creditors, 3d Louisiana Annual Reports, p. 187.

Louisiana has no Commercial Code. The *lex mercatoria* prevails here, except when encroached on by statute. If any article of the Code appears to conflict with the general commercial law, the presumption will be in favor of the rule of the commercial law. See observations of Chief Justice Eustis, in Thompson vs. Mylne, 2d La. Ann., p. 210. In this instance there is no departure attempted. Hence, the exposition of a general rule of commercial law, is as binding in Louisiana as elsewhere.

Talcot vs. McKibben, 2d. Martin's Louisiana Reports, p 304.

Wagner vs. Kenner, 2d. Robinson's Louisiana Reports, p. 124.

Durnford vs. Patterson, 7th Martin's Louisiana Reports, p. 460.

Barry vs. Louisiana Ins. Co., 12th Martin's Louisiana Reporst, p. 498.

Robertson vs. Nutt, 2d New Series, Louisiana Reports, p. 124.

Moreover the real estate which the bill seeks to reach (Rec. p. 2), cannot become the property of the commercial partnership, either by the commercial law or by the law of Louisiana. It has been held that the firm creditor can have no preference at all, upon real estate.

Skillmain vs. Purnell, 3rd Louisiana Rep. p. 497;
Bernard vs. Dufour, 17th Louisiana Rep. p. 596;
Wild vs. Peters, 1st Louisiana Annual Rep. p. 432.

The defences to the suit in the original suit were cumulative. They were sustained by the decrees of the Circuit and of this Court. The pleas based on those decrees, were properly maintained, and the decree of the Circuit Court should be affirmed.

Respectfully submitted,

HENRY C. MILLER,

Solicitor for Defendant.